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ABSTRACT

This book is a general guide to Pennsylvania school law designed for use by school board members, school administrators, school attorneys, and interested laymen. It is organized in 17 chapters that focus in turn on different areas of school law, including school board members and school district officers, superintendents, teachers, pupils, intermediate units and area vocational technical schools, assessment and collection of school taxes, school buildings and facilities, insurance, school curricula, state aid, federal aid, transportation, local school finances, nonteaching school employees, and the Pennsylvania Public Employee Relations Act. Within each chapter, information is presented in simple question-answer format, and each answer cites the appropriate section of Pennsylvania state law that applies. The book also includes an organizational chart of the Pennsylvania court system, a glossary of significant terms, and a subject index. (JG)

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PENNSYLVANIA SCHOOL LAW HANDBOOK

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SCHOOL LAW

HANDBOOK

CORRECTION

The answer printed for question 5:103 on page 62 of the *Pennsylvania School Law Handbook* (1976 edition) should be corrected. The number of days concerning part-time employment for a member of the retirement system receiving a monthly withdrawal allowance is incorrect.

Please cut and paste this correction on page 62, question 5:103 in your ***School Law Handbook.***

5:103 Is it permissible for a retired teacher to serve as a substitute in a public school or as a home instruction teacher of a physically handicapped child?

A member receiving a monthly withdrawal allowance of a monthly superannuation retirement allowance may be employed part time, without loss of annuity, in any teaching or school position for a period not exceeding 60 days in any one school year.

For the guidance of school board members,
administrators, solicitors and
interested citizens in the state of Pennsylvania

A HANDBOOK OF INFORMATION ON PENNSYLVANIA LAW AND LEGAL OPINIONS RELATING TO EDUCATION

Produced under the direction of

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3400

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INTRODUCTION

This *Pennsylvania School Law Handbook* has been designed to be widely used by school board members, school administrators, school attorneys and others who have a broad interest in Pennsylvania school law. It is not intended as a substitute for the School Code nor as a substitute for proper legal opinions which should be rendered by school solicitors.

The handbook follows the general style established in the first printing, a style patterned after that used by the New York School Boards Association for a similar publication.

This *Pennsylvania School Law Handbook* has been produced under the direction of Dr. Matthew W. Gaffney, associate professor of educational administration, with the cooperation of graduate students in the School of Education at Lehigh University. Dr. Herbert Bryan, former assistant commissioner for basic education for the commonwealth, has served as editor for this publication.

The *Pennsylvania School Law Handbook* has been published in cooperation with the Pennsylvania School Board Solicitors Association. It becomes another of the basic handbooks for school officials published by the Pennsylvania School Boards Association. This third printing has been updated to reflect changes in law and court opinions, as of June 1, 1976.

FRED M. HEDDINGER
Executive Director

USING THE INDEX
Pages 181-191

The first digit after each reference indicates chapter, followed by question number; e.g., 12:9.3 means Chapter 12, question 9.3. Rather than repeat chapter numbers and initial question numbers in multiple references, the additional question number is placed in parentheses; e.g., 2:13.1 (2) (3) means Chapter 2, questions 13.1, 13.2 and 13.3.

All questions are broken down under the subject categories listed on page 181.

Editor's note: For the convenience of the user of this publication, in several instances the author has placed a section number in parentheses after the answer to a question; e.g., (Section 510). This refers to Section 510 of the Public School Code. If the section number in parentheses is 2800 or above, it refers to the "related laws" section of the School Laws of Pennsylvania. See 1.9 and 1.10.

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SCHOOL LAW

Chapter I

General information

1:1 Is public education a federal or a state responsibility?

The state's. The 10th Amendment to the Constitution of the United States clarifies this situation when it states: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively, or to the people." Thus, since public education is not mentioned in the federal Constitution, it, therefore, becomes a state responsibility. This was reaffirmed by the Supreme Court of the United States in the Rodriguez case.

1:2 Where does the responsibility for public education rest in the commonwealth of Pennsylvania?

In the General Assembly. The Constitution of the commonwealth, in Article III, Section 14, states: "The General Assembly shall provide for maintenance and support of a thorough and efficient system of public schools to serve the needs of the Commonwealth."

1:3 How does the General Assembly carry out this constitutional mandate?

By the legal delegation of powers. The General Assembly, while it holds supremacy in matters of public education, actually is the constitutionally ordained school board of the commonwealth. Although retaining its plenary powers, it meets its obligation to public education through regulatory statutes and appropriations and by delegating its operational obligations to agencies which it creates for that purpose.

1:4 What are some of the agencies, created by the Legislature, to carry out the state's obligation to public education?

Primarily, the General Assembly created school districts and school boards to carry out the mandate at the local or grassroots level. In addition, the General Assembly has created the State Board of Education, the State

Vocational Board, the Department of Education, the Intermediate Unit and, at the higher education level, the state colleges and universities.

1:5 Are the actions of school boards governed only by statutes enacted by the General Assembly?

No. However, the statutes are basic to all the other governing rules and regulations. The following are some of the governing influences on a board of school directors.

- Provisions of the State Constitution
- Rules, regulations, standards and policies adopted by the State Board of Education
- Statutes passed by the General Assembly
- Regulations, directives and guidelines issued by the Department of Education
- Opinions and interpretations issued by the Department of Justice
- Court decrees

1:6 What is the "Public School Code?"

The Public School Code is a compilation of the statutes enacted by the Legislature having direct and pertinent reference to public education, its programs, its operations and its management.

1:7 What are the "Pamphlet Laws" in Pennsylvania?

After each session of the General Assembly, the Pennsylvania Legislative Reference Bureau publishes a volume of 'Pamphlet Laws" containing every act, educational and otherwise, passed during that session. (*Editor's Note: PSBA publishes, as it is enacted, each Pamphlet Law that affects education.*)

1:8 How are "Pamphlet Laws" indexed for ready reference?

The Legislative Reference Bureau arranges the acts by number as passed. However, for reference purposes and convenience of locating, the index reports by the page number on which the act begins. Thus, an index listed as "P.L. 30, 1949" means the act of the 1949 session of the Legislature that begins on page 30 of that volume.

1:9 The Department of Education publishes and distributes a publication called "The School Laws of Pennsylvania." How does this differ from the Public School Code?

The publication, "The School Laws of Pennsylvania," appears in two sections or parts. The Public School Code of 1949, as amended, comprises the first part of the volume. The School Code part consists of articles I through XXVII; that is, sections 101 through 2702. The second section or portion of the volume, the "School Laws of Pennsylvania" consists of laws or excerpts of laws, not a part of the School Code, but dealing with or affecting the public schools less directly. These related laws appear in articles XXVIII through XL; that is, sections 2801 through 4009.

1:10 With what educational areas do these "related" laws deal?

In the "related" section of the volume, "The School Laws of Pennsylvania," Article 28 deals with the administrative organization for education — the Department of Education especially — but covers the boards of trustees of state colleges and universities, higher education assistance agency and the State Tax Equalization Board. Article 30 treats taxation by municipalities, while Article 32 affects motor vehicles, including school buses. School employe retirement is covered in Article 33; Article 34 deals with child labor; 37 with discrimination in hiring; and 40 with nonpublic education.

1:11 What is a school district?

Legally, a school district is a minor political subdivision of the state, created by the state to carry out the state's obligation to public education.

1:12 What is a school board?

A school board is an agency, found at the local level, created by the General Assembly, and to which the General Assembly has delegated authority, and which has been charged with putting into operation, within school districts, the intent of the Legislature. A school board is a legislative body, not an administrative body.

1:13 Are school board members local or state officials?

State officials. Although elected locally, school board members are not local officials. They are officials of the state charged to carry out the Legislature's educational bidding.

1:14 What is the source of a school board's authority?

The General Assembly. A school board has no rights or authorities except those that are expressly and specifically given to it by action of the Legislature or that are reasonably implied by action of the Legislature. There is no local authority to operate public schools except as delegated by the General Assembly as a matter of convenience and good management.

1:15 May a school board own property?

No. While a school board is permitted to hold title to land and property, the property of a school board is owned by the state.

1:16 Does the General Assembly have power to alter school districts and limit the authority of a school board?

Yes. The General Assembly has power to create school districts; hence, the plenary power to alter, combine or even abolish them. In like manner, the General Assembly created the agency known as the board of education and determined its powers; hence, what it creates, the General Assembly can strengthen, weaken or even abolish.

1:17 How many school districts are there in Pennsylvania?

Five hundred five (505), all resulting from the mandate of the General

Assembly under the provisions of Act 299, enacted August 6, 1963, known as the School District Reorganization Act.

1:18 How are school districts classified?

School districts are classified according to population as follows:

First Class — 1,500,000 or more
First Class A — 500,000 to 1,500,000
Second Class — 30,000 to 500,000
Third Class — 5,000 to 30,000
Fourth Class — less than 5,000

1:19 How many school districts are there in each class?

First Class — 1 (Philadelphia)
First Class A — 1 (Pittsburgh)
Second Class — 69
Third Class — 401
Fourth Class — 33

1:20 What is the State Board of Education, and how do its members attain office?

The State Board of Education is a state educational agency created by an act of the General Assembly in 1965. It is made up of 17 members all appointed by the governor, and approved by the Senate, for terms of six years. Members of the State Board of Education serve without pay.

1:21 What are the powers of the State Board of Education?

The State Board of Education is the "policy-making" agency whose powers have been delegated to it and defined by the General Assembly, some of which are as follows:

- Promulgate and adopt rules, regulations and standards governing educational program of the commonwealth.
- Review any regulations, guidelines or directives issued by the Department of Education or other educational agencies.
- Review and approve budgets for the Department of Education, state colleges and universities and state-related universities.
- Hear appeals on school district reorganization.
- Conduct investigations and hold hearings on annexation cases.
- Establish policies regarding branch campuses of state institutions of higher learning.

1:22 What is the difference between the State Board of Education and the Councils of Basic and Higher Education?

The councils are part of, or the divisions of, the State Board of Education. The state board is divided into two branches: the Council of Basic

Education which, as the name signifies, deals with and treats all matters pertaining to basic education; and the Council of Higher Education, which serves the area of higher education.

1:23 What are some of the educational areas for which the State Board of Education has adopted regulations or standards?

Some of the areas so affected are:

- School building construction
- School district reorganization
- Curriculum
- Pupil transportation
- Pupil attendance
- Quality assessment
- Certification

1:24 Are the State Board of Education's standards and regulations readily available to school officials?

Yes. The State Board's regulations are arranged by chapters and are published in the *Pennsylvania Bulletin* as they are adopted.

1:25 How would one inquire about a particular state board regulation?

By referring to the chapter and section. For example, if one wishes information about early admission of beginners, this is found in State Board Regulations, Chapter 11-Pupil Attendance; and in Section 11-16.

1:26 What constitutes the "State Board of Vocational Education?"

The members of the State Board of Education are also the members of the State Board of Vocational Education. The two boards, although having identical members, sit and transact business as two separate agencies.

1:27 What are the functions of the Department of Education?

The Department of Education is an administrative agency created by the General Assembly with primary responsibility to carry out the educational laws of the state and the policies of the State Board of Education. Its functions could be defined as regulatory, directive, interpretative, supervisory, evaluative and research. The Department of Education does not make policy, but is authorized to adopt such rules, regulations, directives or guidelines as may be necessary to carry out legislative mandates or state board policies.

1:28 How is the Department of Education administered?

The Pennsylvania Constitution in Section 8, Article 4, provides that the Department of Education be administered by a secretary of education (formerly, the superintendent of public instruction).

1:29 What is the relationship of the Department of Education to the Department of Public Instruction?

The two are the same agency. Act 74, signed into law July 23, 1969, changed the name of the Department of Public Instruction to the Department of Education and changed the title of the superintendent of public instruction to that of secretary of education.

1:30 How does the secretary of education get his job?

The secretary of education is appointed by the governor with the advice and consent of the Senate. He is appointed for a four-year term or at the convenience of the governor and is a member of the governor's cabinet.

1:31 By what method does the secretary of education usually communicate to local school officials?

The secretary of education is not restricted in his method of communication; however, the two official instruments are the *Basic Education Circular* and the *School Administrator's Handbook*. The handbook carries the more formal regulations, often explanatory of the state board's regulations and standards; the circular deals primarily with information and instructions.

1:32 Does the Department of Education license private schools?

Yes. The Department of Education performs this licensing function through four private school boards as follows:

- Private Academic School Board
- Private Business School Board
- Private Technical School Board
- Private Correspondence School Board

In addition, the department houses a committee which licenses private schools for driver education.

1:33 Do parochial schools need a private school license?

No, if the parochial school is operated by a bona fide religious organization.

1:34 What are some of the services that the Department of Education extends to nonpublic schools?

The Department of Education is required to supply or render the following to nonpublic schools:

- Transportation to nonpublic school pupils (Act 372, signed December 29, 1972).
- Auxiliary services to be rendered through the facilities of the intermediate unit (Act 194, signed August 12, 1972).
- The department directly, or through the intermediate unit, purchases textbooks and instructional materials and loans same to nonpublic schools (Act 195, signed August 12, 1972).

- Health services, medical and dental examinations to be extended to all nonpublic school pupils. (Sections 1401-1422 of the Public School Code, amended July 15, 1957 by P.L. 937).
- Shared-time or dual enrollment of nonpublic pupils in public schools. (Sections 502-1301-1302 of the School Code and state board regulations Chapter 11, Section 11:33.)
- Enforcing compulsory attendance. (Section 1327 of the Public School Code.)
- Providing special education services. (Amended Consent Agreement issued May 5, 1972, by the U.S. District Court for Eastern Pennsylvania.)
- Issuance of working certificates as required of the superintendent under the "Child Labor Law." (Section 3410)

1:35 What is the Interstate Compact for Education?

The Interstate Compact for Education is a formal agreement among the several states to establish and maintain close relationship, cooperation and understanding among executive, legislative, educational and lay leaders. It provides a forum for the discussion, research, development, crystallization and recommendation of policy alternatives for the improvement of education. Pennsylvania became a part of the compact by act of the Legislature on October 8, 1969, by the passage of Act 96. The Education Commission of the States (ECS) is an outgrowth of the compact.

Chapter II

Board of school directors

2:1 Are members of the school board local officials or state officials?

School board members are both local and state officials but, being agents of the State Legislature that created them to carry out the Legislature's constitutional mandate, school board members are state officials. Although elected locally, school boards are responsible to the citizenry of the state as a whole as well as local citizens, and this responsibility is delegated to them by the Legislature.

2:2.1 May candidates file for school board "cross-file" at primaries?

Yes. This became legally possible with the passage of Act 171, signed by the governor July 7, 1972. This "cross-filing" was first used in the May 1973 primary.

2:2.2 How many school directors does each school district have?

Act 150 of 1975 established an elected school board for Pittsburgh. The electors chose a nine-member board. Thus, all school districts now have nine school directors. Philadelphia is now the only nonelected board.

2:2.3 What is the term of office of school board members?

In all classes of school districts, the term is six years, except in Pittsburgh where the term is four years.

2:3.1 Who is eligible to become a member of the board of school directors?

In order to be eligible to be elected or appointed to a Pennsylvania school board, one must be a citizen of Pennsylvania, a person of good moral character, at least 18 years of age and have been a resident of Pennsylvania for at least one year prior to election or appointment. Act 138, signed June 16, 1972, made 18-year-olds eligible.

2:3.2 May a teacher, principal or superintendent serve on a school board?

Yes, but not on the school board of the school district where he is employed.

2:4.1 May a school board employ a solicitor?

A school board may, at it's discretion, employ a solicitor, establish his responsibilities and fix his salary.

2:4.2 May a member of a board of school directors be appointed solicitor of his district?

As a general rule, the appointed solicitor may not be a member of the school board. However, Section 324 of the School Code provides that a person who has served as a school director for two consecutive terms may be elected as solicitor of the school board of which he is a member and, after resigning as a school director, is entitled to pay for his services.

2:5 Is a board of school directors a corporate body?

Yes. The school districts in the commonwealth of Pennsylvania are corporate bodies. The school board is a corporation. Its powers and duties are accordingly defined by law. (Section 211)

2:6.1 What penalties may be inflicted on a school board or its members if they willfully violate or neglect to properly perform their duty?

If the board of school directors in any district refuses, or neglects, to perform any duties imposed upon it by the Public School Code, 10 taxpayers may present a petition, in writing, to the court of common pleas of the county detailing the charges. If the court is of the opinion that the directors are not carrying out their mandatory duty, it has the power to remove the board or any of its members and appoint other qualified people. The court may require the directors to pay the court costs.

2:6.2 If a school board member is removed from office by court action, may he or she ever serve again on a school board?

Section 318 of the Public School Code stipulates that any person so removed from the office of school director shall not be eligible to serve again as school director for a period of five years thereafter.

2:7 What are some of the powers and duties of a board of school directors?

The board of school directors shall establish, equip, and maintain a sufficient number of elementary schools. They may establish, equip, and maintain other schools (e.g., high schools, trade schools, kindergarten, etc.), which they deem proper to establish. The board has power to annually levy and collect the necessary taxes required to run the schools. The Public School Code specifically lists the following:

- Fix length of school term.
- Adopt textbooks.

- Appoint teachers and administrators.
- Appoint tax collectors.
- Levy taxes and adopt the budget.
- Buy and sell land.
- Dismiss teachers after hearings.
- Create indebtedness.
- Adopt courses of study.
- Establish additional schools.
- Designate depositories for school funds.
- Enter into contracts.
- Fix salaries of officers and teachers.

The board shall also advertise for bids, has the right to remove any of its officers or appointees under certain circumstances, and may attend meetings or conventions at district expenses. It is the board's duty to shape the policy for a sound educational program. (Section 501-526)

2:8 What is the procedure for filling a vacancy on a school board?

Act 181, signed January 10, 1972, amended Section 315 of the School Code to provide that in all school districts of the second, third and fourth classes, when a vacancy occurs the remaining members of the school board, if a majority of the membership, shall within 30 days appoint a qualified person to fill the vacancy but to serve only until the next succeeding municipal election at which election a member is elected for the unexpired portion of the term. In Philadelphia and Pittsburgh, the mayor fills the vacancy.

2:9 May a school district appoint a superintendent of schools?

Yes. The Public School Code provides that every operating school district shall employ a superintendent, such superintendent to be elected by a majority vote of the membership of the school board. (Section 1071)

2:10 Is there a legal number of regular meetings a board of school directors must hold?

Section 421 of the Public School Code specifies that a school board shall establish a schedule of regular meetings specifying time and place. Meetings must be held at least once every two months.

2:11.1 Is there a definite legal requirement as to the notice which board members must receive of a regular board meeting or a special meeting?

The Public School Code requires that notice be given to all board members unless the meetings are regular ones, the dates of which have been preestablished. (Sections 402-421-423)

The board members also shall have reasonable notice of all special meetings, and they may adopt reasonable rules stating the kind and length of the notice that shall be given to its members by the board secretary.

2:11.2 Must the public receive notice of school board meetings?

Public notice of each special meeting and of the schedule for regular meetings must be given in accordance with Act 175 (1974), the Sunshine Act. Such notice must be published in a newspaper of general circulation at least three days before the first regularly scheduled meeting, and at least 24 hours before a special or rescheduled meeting.

2:12 May any member of the school board call a special meeting of the board of school directors?

Only the president has the power to call special meetings. However, three or more members may request a meeting, in writing, to the president, or a meeting of the board may be called by the president if a majority of its members request it. (Section 426 and 428)

2:13 Shall all school board meetings be open to the public?

The law is specific in requiring that all "official business" of a school board must be transacted in an open public meeting; hence, every meeting of a school board shall be an open meeting. Executive sessions, if held, need not be open to the public.

2:13.1 Are executive sessions permitted under the Sunshine Act?

Executive sessions are still permitted under Act 175. However, formal action cannot be scheduled or taken during an executive session — these actions must be taken at a public meeting.

2:14 What is meant by an "adjourned meeting?"

If the school board finds it cannot complete its agenda at a called meeting, or wishes to postpone the agenda to secure data or other information, it may vote to adjourn the meeting to another suitable time, at which time, it will pick up on the agenda where it left off.

2:14.1 Is there a time limit on adjourned meetings?

Under the Sunshine Act, a public meeting may be adjourned for an executive session of 30 minutes duration only for personnel problems or actions associated with labor relations negotiations.

2:15.1 What constitutes a quorum at a school board meeting?

A quorum is defined as half or more of the legal membership of a school board. A quorum is necessary to be present in order to legally transact school board business. (With nine-member boards, a quorum is five.)

2:15.2 May some board members abstain from voting on a proposition or motion?

An affirmative vote of a majority of all the members of the board of school directors present is necessary to pass a motion (except for those items listed in Section 508). If he abstains, his vote will be regarded as agreeing with the action of the majority vote of the school board. In the event of a tie vote, with abstentions not counted, a motion fails. Good practice suggests that split votes should be recorded as to how each member voted.

2:15.3 Do some actions require a majority of *all* of the members of the board?

Section 508 of the School Code enumerates a number of actions where a majority of all of the board members is required, and where such votes shall be duly recorded. Such things as adoption of budget, levying taxes, setting salaries, etc., must be acted upon in this fashion.

2:15.4 Are there any laws that pertain to "special meetings" of the board of school directors?

Special meetings may be called by the school board president either at his own volition or by request of the majority of the school board. Section 423 of the School Code cautions that only those items specifically listed in the call notice of the special meeting may be acted upon at that meeting. (Section 423) The Sunshine Act also affects special meetings.

2:16 Must school board meetings be held within the school district limits?

Yes. The Pennsylvania Public School Code, in Section 421, provides that school directors shall hold meetings at specified times and places. Combined with Act 175, official meetings are expected to be within the district.

2:17 Is a school board president entitled to vote on all questions when presiding at a meeting of the school board?

Yes. The affirmative vote of a majority of all the members of the board of school directors present is required to take action on certain matters, while other matters enumerated in Section 508 require an affirmative vote of a majority of all the members of the board.

2:18.1 May a school director do business with the school district?

Section 324 of the School Code prohibits a school director, during the term for which he was elected or appointed, from engaging in any business transaction with the school board of which he is a member.

2:18.2 Must a board of school directors adopt and operate under a code of ethics?

Section 407 of the Public School Code grants authority to each board of school directors to adopt reasonable rules and regulations for its own government and control. Although these rules and regulations are not called a "code of ethics," every school board should adopt, and keep up to date, a policy manual.

2:19.1 May a school director accept remuneration from his school district?

A school director cannot accept remuneration from his school district. For all practical purposes, it is correct to say that school directors serve without pay. Service on a school board is, and traditionally has been, solely a matter of public service.

2:19.2 May a school board purchase liability insurance for its school board members?

Yes. Act 303 enacted December 6, 1972, makes such purchases possible.

2:20 When does a school director's term expire?

In school districts of the first class A, second, third and fourth classes, terms expire on the first Monday of December next following municipal elections (held in odd-numbered years). Note, however, that reorganization meetings may be held at any time during this first week of December. A board member's term does not expire until the reorganization meeting, thus preserving the ability of the board to act until after such reorganization meeting. In Philadelphia, where the directors are appointed, the term expires on the second Monday of November each odd-numbered year.

2:21 Does the Public School Code require the designation of a bank as the depository of school funds?

Yes. The Public School Code, Section 621, provides that, by a majority vote, the board of school directors shall designate one or more banks or trust companies to serve as a depository for school district funds. The bank must first furnish a proper bond.

2:21.1 Is a savings and loan association a qualified depository?

No. Section 621 of the School Code requires that such depositories be a "bank or bank and trust company." The Banking Code makes a distinction between banks and trust companies on the one hand and savings and loan associations on the other. In most cases, school district deposits exceed the insurance limitations of savings and loan associations, and savings and loan associations have no power to pledge assets to secure public funds as required by law.

2:22 Does a board of school directors have authority to declare a vacancy if a member is absent from two successive school board meetings?

Yes. Section 319 of the School Code grants authority to a board of school directors to declare a vacancy if a school director neglects or refuses to attend two successive regular meetings of the school board unless, of course, detained by sickness or necessary and justified absence.

2:23 Is it ever possible for an individual member of a school board to legally transact business for a school board?

Never. Since a board of school directors is a corporate body, an affirmative vote of a majority of all the members of the board is needed to take action on business before the board. A committee cannot do so, either, except for conducting hearings on behalf of the board if so authorized.

2:24 Are the records of school districts open to inspection?

Yes. Based on the Pennsylvania "Right to Know Law," school district records (with few exceptions) are public records and are available for inspection by any resident of the school district. Certain confidential records, the revealing of which might do damage to the district or an employe, are excepted.

2:25 May the school board legally transfer funds within the budget?

Section 687 of the School Code grants the board of directors the power to transfer any unencumbered balance from one class of expenditure to another, but only during the last nine months of the fiscal year.

2:25.1 May budget transfers be made within the same class of funds without the limitations of Section 687 of the School Code?

Yes, funds may be transferred among budgeted items within the same class of funds without violating sections 609 and 687 of the code.

2:26 What is the school board's responsibility, if any, in the protection and supervision of the financial affairs of student clubs and extracurricular activities?

Section 511 of the School Code charges that the school board shall prescribe, adopt, and enforce rules and regulations regarding management and supervision of clubs, etc., and their funds. It is, however, lawful for a school group to hold funds in its own name and under its own management, but under supervision of a professional employe designated by the board. Since all student activity funds are actually school district funds, regular reports must be submitted to the school board and the records shall be audited as are regular school board accounts.

2:27 May a board of school directors give the vice president all the powers of the president when the latter is absent or disabled?

Yes. The vice president, in the absence of the president, assumes all the duties, powers and responsibilities. (Section 428)

2:28 Is it possible for a school district to go broke?

Yes, but when a school district gets itself into a financially distressed condition, there is provision in sections 691 through 695 of the School Code for the Department of Education to assume control through the appointment of a three-member "distressed school" committee to manage the affairs of the district. If the debts of any school district exceed the amount which the board of directors may collect in any year by taxation, the court may, by a writ of mandamus, institute a special tax through the school directors to collect a sufficient amount of money. In addition, the Local Government Debt Act (Act 185—1972) places certain controls over the debt of all units of local government (including school districts) and subjects all borrowing to overview by the Department of Community Affairs.

2:29 Is there a specific time set by law for the annual reorganization of the school board?

Yes. In Philadelphia, the board meets and organizes during the second week of November. In all other school districts, the boards meet and organize during the first week of December. (Section 401)

2:30.1 Are expenses of school directors and school district employes to a School Boards Association Convention a proper and legal charge against the school district?

Yes. Section 516.1 of the School Code as amended by Act 302, approved by the governor on December 20, 1972, states that public funds may be used to defray actual expenses of school board members while engaged in school board business to attend conventions of educational or financial advantage to the school district.

2:30.2 May a school board member receive expenses for attending conventions out-of-state?

Yes. Act 302, signed December 20, 1972, set the daily expenses for such attendance for members, nonmember secretaries, and solicitors, not to exceed $30 per day and mileage at 12 cents per mile.

2:30.3 Is a school board member entitled to expenses for travel to and from his school board meetings?

Act 302, signed December 20, 1972, approves payment of actual out-of-pocket expenses incurred in attending regular school board and intermediate unit board meetings.

2:30.4 May school boards legally pay dues to the Pennsylvania State School Boards Association?

Yes. This is made permissible by Section 516 of the Public School Code which directs that any school board may become a member of the Pennsylvania School Boards Association and may pay the membership dues out of the school district funds.

2:31.1 Is it permissible for a school board to establish a "capital reserve fund?"

Yes. The School Code grants a school district power to create a capital reserve fund and to accumulate monies for future projects, although the period may not exceed five years from the date when the first payment was made into the fund. (Section 690)

2:31.2 What is the source of monies for a capital reserve fund?

The capital reserve fund is built from receipts of a special tax which each school board is authorized to levy. The tax may not exceed three mills in any one year. (Section 690)

2:31.3 May capital reserve fund monies be invested by the school district?

Yes. Monies in the fund may be invested by the board in securities legal for the investment of sinking fund monies of school districts. All interest from such investment accrues to the capital reserve fund. (Section 691)

2:32 What constitutes the fiscal year of a school district?

The fiscal year of all school districts extends from July 1 to June 30 next, except that school districts of the first, first class A and second class may, by majority vote, establish a fiscal year to coincide with the calendar year.

2:33.1 Is it illegal for an employe to offer a fee or reward for appointment to a position with a school district?

It is illegal. The School Code, in Section 325, states that any person who shall promise, pay, or give to any school director any money in order to influence his choice as a teacher or for other employment with a school district is guilty of a misdemeanor and subject to fine and/or imprisonment.

2:33.2 May a school director solicit or accept a gift or gratuity from a school district employe?

The Public School Code indicates, in Section 327, that it is unlawful for any school board member to demand or accept any gift or donation from any teacher or other employe.

2:34 May a school district be sued?

Yes, but since a school district is a corporate body, it can be sued only in its corporate name. Any legal process against any school district shall be served on the president or secretary of its board of school directors. (Section 211 and 213)

The Pennsylvania Supreme Court on May 24, 1973, in its decision in the *Ayala vs. the Philadelphia City School District,* ruled that the centuries old doctrine of "sovereign immunity" no longer applies to school districts and that such school districts may be sued for negligence.

2:35 May boards of school directors adopt rules and regulations covering the conduct of their employes?

Yes. Section 510 of the Public School Code grants authority to a board of school directors to adopt reasonable rules and regulations for the control of its employes.

2:36 When are payments made by a school district considered to be "improper expenditures?"

Sections 427 and 433 of the School Code infer that an illegal expenditure takes place when the president of the board authorizes payment of money before an order has been acted upon by the board; when the board secretary signs orders for the treasurer to make payments on a contract before the board has approved it; or whenever any expenditure is made contrary to law.

2:37 If improper expenditures are made, are board members personally liable for money paid?

Yes. The Public School Code, in Section 608, specifies if any school director votes for or approves an order for an illegal or improper expenditure of school funds, the director may individually be liable to the district for the amount thereof. Section 2406 of the School Code authorizes the auditor to bring charges if he discovers an illegal or improper order.

2:38 Is it permissible for a school board to execute purchase contracts for school materials in excess of $1,000 without advertising for bids?

Yes. Act 28 of 1972 increased to $1,500 the value of equipment and supplies that may be purchased without bid. Exempt from this provision are such things as: maps, music, globes, charts, films, textbooks, teacher demonstration devices, etc. (Sections 801-807)

2:39 May the board of school directors invest money from the "general fund" of the school district?

Yes. The board of school directors of any school district, according to Section 440.1, may authorize the treasurer of the district to make temporary investment of school district funds in United States treasury bills, time accounts, or certificates of deposit. This is a matter of sound business management.

2:40 Does a board of school directors have the legal right to administer an endowment fund or scholarship fund?

It is possible for a school district to receive and to hold an endowment that is to be administered by the board of school directors. The board may also set and enforce rules governing the raising and disbursing of funds for scholarships. (Section 216)

2:41 May a school board rescind a previously adopted action?

According to *Roberts Rules of Order*, a previous action may be rescinded by proper resolution of the board.

2:42 May a district magistrate also hold office as a school director?

Section 322 of the School Code declares as incompatible to the office of school director any elected county, town, city or township offices. Section 401 of the County Code also includes the position of coroner.

2:43 Is there an oath of office required of school directors?

Yes. All school directors are required to take the constitutional oath of office before entering upon the duties of their office. This oath is detailed in Section 321 of the School Code.

2:44 Is an annual audit of school district records required?

Absolutely. Article XXIV of the Public School Code clearly states that the auditors shall begin the audit on July 1 of each year in all second, third and fourth class districts.

2:45 When do minutes of a school board meeting become official records?

The minutes of a school board meeting become official records of a school district when approved (usually at the next succeeding meeting).

2:46 What legal implications are there when a school director holds or runs for a political office other than for school director?

A school director may run for another political office while serving on the board, but must resign from the school board if elected. A school director may not hold any office in a municipality, county, town or township. (Section 322)

2:46.1 May a school director also be a member of the General Assembly?

There is no specific statutory prohibition against a school director serving as a legislator — both roles are legislative in nature. There is no known Pennsylvania court case that prohibits this.

2:47 Is it legal for a board of school directors to engage in collective negotiations with a group of its employes?

Yes. This is the purpose and the impact of Act 195, enacted in 1970, and known as the "Pennsylvania Public Employe Relations Act."

2:48 Are school boards required to establish a grievance procedure for all their employes?

Yes. Act 195, the Public Employe Relations Act, specifies in Section 903 of the act that arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory.

2:49 What are the legal requirements regarding conflicts of interest for school board members?

The Public School Code, in Section 324, directs that no school director may be interested in or do business with his school district during his elected term.

A range of School Code sections set forth conditions that have conflict of interest impact on school boards. Such things as the acceptance of gifts, the employment of relatives, and others are treated in code sections beginning with Section 301 through a number of 300 sections; Section 404 and other 400 sections up to 438; Section 507 up to Section 521; sections 607, 608, 609; sections 751 and 774; sections 801, 803, 807.1, 808, 809, 810; and sections 1106, 1111, and 1129.

The County Code, in Section 402, provides that "no elected county officer or county solicitor shall, at the same time, serve as a member of any legislative body. . . ,nor as school director of any school district. . . ."

Act 195, in Section 1801, sets forth conditions that are a conflict of interest for a school board member.

2:50 May the board of school directors authorize a payment in advance of approval at a meeting?

Section 433 of the Public School Code permits a school board to authorize its secretary to prepare and sign orders on the treasurer for the payment of amount owing under any contracts which were previously approved by the board, and by the prompt payment of which the district will receive a discount or other advantage, without the approval of the board first having been secured.

2:51.1 May a school board defend itself against legal actions?

In addition to being able to purchase liability insurance (see 2:19.2), school boards may defend themselves against legal action through the school solicitor.

2:51.2 Are school boards protected against legal actions brought against them?

No. Section 213 of the Public School Code states that each school district has the right to sue and to be sued in its corporate name. Any legal process against a school district shall be served on the president and secretary of the school board. (See also 2:34)

2:52 Does a school board have the authority to make rules regulating vehicular traffic and parking on school property?

Act 110, approved June 9, 1972, grants school boards authority to make rules and regulations, not inconsistent with the provisions of the Vehicle Code or any local traffic ordinance, for the admission, control, movement and parking of vehicles on school property. Act 110 also sets the fine chargeable for violation and conviction.

2:53 May a teacher or administrator use corporal punishment in the discipline of a pupil?

In the commonwealth, as stated in Section 1317 of the School Code, a teacher, or administrator, stands **in loco parentis** and the courts have consistently held that, in the absence of statute or school board regulation forbidding him or her from doing so, a teacher may administer corporal punishment to a pupil for offenses committed against the good order of the school.

2:53.1 May a school board prohibit use of corporal punishment?

Yes. Section 510 of the School Code authorizes the school board to make reasonable rules and regulations for the conduct and deportment of its teachers and other employes. Under this authority, corporal punishment could be prohibited.

2:54 What authority does the Public School Code grant to school boards in the control or discipline of pupils?

Section 510 of the School Code specifically charges the school board to establish reasonable rules governing the conduct and discipline of all pupils while under the supervision of the school.

The United States Supreme Court in *Baker vs. Owen*, October 1975, suggested minimal procedural guidelines to be followed. First, except for those acts of misconduct which are so anti-social or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior could occasion its use, and subject to this exception, it should never be employed as a first line of punishment for misbehavior. Second, a teacher or principal must punish

corporally in the presence of a second school official (teacher or principal), who must be informed beforehand and in the student's presence of the reason for the punishment.

Editor's Note: As this publication goes to press, the State Board of Education regulations on student rights are in the process of litigation.

Chapter III

School district officers

3:1 May the secretary of a school board be a nonmember?

Yes. The Public School Code requires that the secretary in school districts of the first class, first class A and second class school districts be nonmembers. In school districts of third and fourth classes, the school boards have the option to name a member or nonmember secretary. Such a member secretary may be compensated. (Section 404)

3:2 Must the treasurer of a school district be a school board member?

No. In Philadelphia and Pittsburgh, the treasurer to the school district shall be the treasurer of the city embracing the school district. In all other classes of school districts, the treasurer may be a school board member, or the school board has the option to select a bank or any corporation duly qualified and legally authorized to transact a fiduciary business in the commonwealth. Such a member treasurer may be compensated. (Section 404)

3:3 Is a surety bond required of the secretary, treasurer and the tax collector?

Yes. A proper bond, in such amount and with such corporate surety as the board of school directors may approve, conditioned for the faithful performance of his duties. (Sections 364 and 684)

3:4 What are the accounting forms and procedures required of the secretary and treasurer?

Forms for the secretary and treasurer are provided by the Department of Education for the annual budget and the annual superintendent's report. These reports are signed by the superintendent, the president and the secretary of the board of school directors.

3:5 Is an annual audit of the school district funds required?

Yes, as provided in Section 437 of the School Code.

3:6 May a school board use a facsimile signature check-signer on school district checks?

Yes. Facsimile signatures are permitted pursuant to Act 50, signed March 23, 1972.

3:7 Does the Public School Code permit the appointment of a bank as a school district treasurer?

Yes. In fact, it is a recommended procedure. (Section 404) In districts of second, third and fourth class, a treasurer is appointed in May for a one-year term.

3:8 May an officer of a bank wherein school district funds are deposited act as a school district treasurer?

Yes. (Section 324)

3:9 May a school board remove its school district treasurer from office?

Yes. The board of directors shall, after due notice, giving the reasons thereof, and after a hearing, if demanded, have the right, as shown in Section 514 of the School Code, to remove any of its officers for incompetency, intemperance, neglect of duty, violation of any of the school laws of this commonwealth or other improper action.

3:10 May the school district secretary be removed in the same manner?

Yes. (Section 514) Although elected for a four-year term (Section 404), courts have held that such officers serve at the discretion of the school board.

3:11 May a school secretary conduct business with the school or school district which he serves?

No. (Section 324)

3:12 May the office of school tax collector and school district treasurer be held by the same person?

Only in school districts of the first class or first class A where the school district treasurer may collect taxes. (Section 658C)

3:13 Is the school tax collector paid a salary or does he operate on a commission basis?

The usual policy in school districts of the second, third and fourth classes is to pay on a commission basis, which commission must be set prior to the date for withdrawal of names for the primary ballot in municipal election years, and the commission shall not exceed five percent of the amount collected. However, the school board may, at its discretion, pay the collector on a salary basis. (Sections 3034 and 3035)

3:14 Under what law does the Comptroller's Division of Pennsylvania audit the accounts of school district officers?

This authority is detailed in Section 2553 of the School Code and grants the comptroller authority to conduct regular, field and special audits of a school district's records.

3:15 May the secretary or treasurer of the board of school directors destroy their records after their term of office?

No. Section 518 of the School Code requires that such records be held for a period of six (6) years.

3:16 Are a school district's secretary and treasurer reports public documents?

Yes.

3:17 Who is the legal custodian of all financial records and reports of the school district?

Section 443, item 6, of the Public School Code, charges the secretary of the board of directors as the legal custodian of all financial records and reports of the school district.

3:18 Can the school district secretary issue a check for payment of an invoice before board approval, to take advantage of cash discounts?

Yes, if such authorization is part of school board policy. (Section 433)

3:19 Are claim forms required in submitting bills and invoices to boards of school directors for payment?

No. (Section 433)

3:20 Is the legal counsel of the board of school directors a regular school district officer?

Section 406 of the School Code says he is not; however, Section 324 provides that a school board member who has served two consecutive terms may be selected to the position of solicitor.

3:21 Who serves as auditor for a school board?

Section 2401 of the School Code provides that the auditor in school districts of the first class shall be the school comptroller; while in all other classes of school districts the auditor can be a CPA, a competent public accountant or the locally elected municipal auditors as the school board may choose.

3:22 What are the duties and powers of the auditor in school districts?

The auditor's duties are to audit the finances of the school district and of the school board, in every department thereof, together with the accounts of all school treasurers, school depositories, teachers' retirement funds, teachers' institute funds, directors' association funds, sinking funds, and other funds belonging to or controlled by the district. (Section 2401)

In performing their legal functions, the auditors shall carefully inspect every school order issued for payment of money by the board of school directors, and the accounts of each official or person whose accounts are to be audited during the period of time covered by their audit. Any school order issued improperly shall, if paid, be disallowed by the auditors, and charged against the person or persons voting for or approving the order. All such orders disallowed shall be set forth in the report to be made by the auditors together with such other sum or sums as should be properly charged against any person or persons. The auditors shall also examine and report to the board of school directors upon the sufficiency and the security of the bonds of the officers, employes and appointees of the board of school directors and of the school depositories. (Section 2406)

Auditors shall notify, by mail or otherwise, any person against whom a sum is charged of such fact and the amount charged against him. (Section 2407)

3:23 With whom does the auditor file his report?

Auditors shall file an auditor's report of the finances of the district for the preceding year with the board of directors, entered on the minutes of the board by the secretary, and forwarded to the secretary of education. A copy of this report shall also be filed with the intermediate unit board of directors. (Section 2408)

3:24 How is the president or vice president of the board selected?

By the majority vote of the board members. (Section 404 and Section 46, Robert's Rules of Order)

Chapter IV

The superintendent

4.1 Shall every school district employ a district superintendent?

Yes. One of the results of Act 102, enacted into law May 4, 1970, was to eliminate the position of supervising principal and to authorize every operating school district to name a superintendent.

4:2 What are the qualifications of a district superintendent of schools?

Every applicant must hold a "letter of eligibility," the conditions for issuance of which, as set by the State Board of Education, state that the candidate:

1. Be of good moral character. (Section 1002)
2. Hold a diploma from a college or institution approved by the Department of Education. (Section 1003)
3. Have completed a graduate course in education approved by the Department of Education.
4. Have six (6) years of successful teaching experience, not less than three (3) years of which have been in a supervisory or administrative capacity. (Section 1003)

4:3 How does the district superintendent secure office?

The district superintendent is elected by a majority vote of the membership of the board of school directors of such district. (Section 1071)

4:4 What is the term of office of a district superintendent?

Act 1 (1974) provides that the superintendent's term of office may be for a period of three, four or five years from the effective date of such appointment. Reappointment for a term of similar length is automatic if the superintendent is not notified at least 150 days in advance of the expiration of a current term. (Section 1073)

4:5 May a district superintendent engage in another educational occupation during his term of office?

No. The Public School Code directs that a district superintendent shall not engage in the business of teaching in this commonwealth, unless it is done without compensation other than that paid to him as superintendent. A superintendent may, however, receive compensation for services in a summer school operated by a college or university devoted to the training of teachers if he is released for such services by the board of school directors of the district in which he is employed, "or for services rendered evenings or Saturdays during the school term, to any such college or university." (Section 1007 as amended by Act 111 of 1973 and Section 1008.)

4:6 What is the salary of a district superintendent?

Section 1075 of the Public School Code establishes minimum salaries for the district superintendent in the following sized school districts:

1. A school district employing fewer than 100 teachers — minimum salary $13,000.
2. A school district employing more than 100, but fewer than 300 teachers — $14,000.
3. A school district employing 300 or more teachers, the minimum salary payable is $15,000.

The Public School Code does not establish a maximum, thus granting a school board discretionary authority to establish the superintendent's salary anywhere above the mandated minimums.

4:7.1 What are the general powers and duties of the district superintendent?

In normal practice, the school board establishes the powers, duties and functions of the superintendent. The Public School Code, however, lists these general responsibilities of a superintendent:

1. To see that there shall be taught the several branches required by law, as well as such other branches as the board of school directors may require. (Section 1005)
2. To notify the board of school directors, in writing, of the school board's neglect to provide competent teachers to teach the several required branches. (Section 1006)
3. To submit to the secretary of education an annual report of the schools under his supervision on or before the first Monday in August. (Section 1006)
4. To visit personally, as often as possible, the schools under his supervision. (Section 1081)
5. To give directions in the art and method of teaching as he deems necessary and to report to the board of school directors any insufficiency found. (Section 1081)

4:7.2 Does a district superintendent have a vote at a school board meeting?

No. Section 1081 of the Public School Code gives the superintendent a seat at the school board's table, authorizes him to speak on all matters before the school board, but not to vote.

4:7.3 May a superintendent elect or name a teacher to his staff?

No. No one may become an employe of a school district except by favorable action of a majority of all of the members of the school board.

4:7.4 What is the superintendent's function in selecting members to his staff?

The most desirable and efficient operation is for the superintendent, and members of his staff if he chooses to use their services, to interview prospective teachers and staff members, to determine their qualifications and fitness for the position in question and, then, to recommend or nominate his choice to the school board for approval and election.

4:7.5 Do superintendents sign the contracts with teachers and other professional employes?

No. Contracts are arrangements between the employe and the school board (school district). The employe signs for himself or herself, while the school board president and secretary sign for the school board.

4:7.6 Who shall rate or evaluate the services of a teacher or other employe?

The Public School Code charges the district superintendent with this responsibility. The School Code does authorize him to designate a principal, supervisor or an evaluating committee to perform the evaluation for his office. The School Code is specific, however, in that only the superintendent can issue an unsatisfactory rating.

4:8.1 What are the district superintendent's responsibilities in the evaluation of teachers during the teacher's probationary term?

It is the district superintendent's duty to notify each temporary employe, at least twice each year during the period of his or her probationary employment, of the professional quality, progress and the rating of his or her success. Further, the district superintendent shall certify to the secretary of the school board the name of any temporary professional employe whose work has been evaluated as satisfactory during the last four (4) months of the second year of temporary employment in order that the employe gain the status of a professional employe or a "tenured" employe for the ensuing school term. Such action must be recorded in the official records of the school board. (Section 1108)

4:8.2 What is the district superintendent's responsibility in reference to the removal of a teacher during a probationary period?

In case the work of a temporary professional employe is rated unsatisfactory by the district superintendent, the employe shall be notified by the superintendent, in writing, of such unsatisfactory rating within ten (10) days of such rating before being dismissed. A dismissed probationary teacher and all other nontenured employes, have a right to a hearing under the Local Agency Law. (Section 1108 — 53 PS §11301)

4:8.3 What are the district superintendent's responsibilities in the placing of a probationary teacher on tenure?

The district superintendent is held responsible to notify the secretary of the board of school directors of the rating received by the employe during the last four (4) months of the employe's second year of service with the school district, and, if satisfactory, instruct the secretary to issue a professional contract to the teacher that must be signed by the board president and secretary. (Sections 1108 B, 1121)

4:8.4 What are the superintendent's responsibilities in removal from office of persons on tenure against whom charges have been made?

To bring the facts of the situation to the attention of the school board with a recommendation and to see that the proper procedure is followed by the school board.

4:8.5 What are the steps of procedure to be followed by a school board in discharging a tenured employe?

1. The board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her dismissal is based, as enumerated in Section 1122 of the School Code.
2. A written notice signed by the president and attested by the secretary of the board shall be forwarded, by registered mail, to the professional stating the time and place of the hearing which hearing shall not be sooner than ten (10) days nor later than fifteen (15) days after the date of such written notice. (Section 1127)
3. The school board shall conduct a hearing.

Editor's Note: As this publication is being revised, the Supreme Court of the United States, in the Hortonville, Wisconsin, case, has ruled that a school board need not utilize an impartial hearing officer for discharges in order to satisfy the due process protection of the federal constitution. Whether or not such a procedure is required under state law is presently being litigated.

4. All testimony of such hearings shall be recorded by a competent disinterested public stenographer at the expense of the school district. (Section 1127)

4:8.6 After hearing a dismissal case and reviewing all testimony, what action must a school board take, if any?

After hearing testimony, the board of school directors may, by two-thirds vote of all members (to be recorded by roll call), dismiss charged employe. If the vote is less than two-thirds, charges are dismissed and the professional employe restored to his or her position. (Section 1129)

4:9 Has a district superintendent authority to revoke a teacher's certificate?

No. This can be done only by the secretary of education after proper hearing. (Sections 1211 and 2832).

4:10 May the district superintendent commit a school delinquent to a detention center?

The superintendent may, with the approval of the school board, proceed against a delinquent before a juvenile court, but only the court may actually commit a school delinquent to a detention center or reform school. (Section 1338)

4:11 May a district superintendent suspend a minor from required attendance at school?

A superintendent or principal in charge of a public school may temporarily suspend any pupil on account of disobedience or misconduct. Only the school board, and only after a proper hearing, may permanently expel a student. (Section 1318)

Editor's Note: The Supreme Court of the United States in Goss vs. Lopez, set forth these criteria for temporary suspensions: limited to up to three days; the pupil must receive either a written or oral statement of charges; the pupil must receive an explanation of the evidence; and an opportunity must be afforded for the pupil's side to be presented. The State Board of Education regulations that affect these procedures are presently being litigated. The U.S. District Court for Western Pennsylvania, in Alex vs. E.J. Allen *(See* School Law Information Exchange, *Vol. XIII, No. 49) ruled that a procedure whereby the school district solicitor conducted a suspension hearing was acceptable.*

4:12 What are the district superintendent's responsibilities in relation to transportation of school children?

The responsibility for pupil transportation is under the jurisdiction of the board of school directors. The school board establishes the transportation policies; the superintendent administers the program.

4:13 What is the chief school administrator's relationship or responsibility to the intermediate unit?

The chief school administrator is a member of the intermediate unit council to serve in an advisory capacity only to the executive director of the intermediate unit. (Section 916-A)

4:14 Is the chief school administrator responsible for adherence to the Child Labor Law in his district?

Yes. (Section 3423)

4:15 Who commissions the district superintendent?

The secretary of education issues the commission to the qualified superintendent upon application from the school board which has elected him. In a 1975 Commonwealth Court case (*Mildred Flinn vs. John C. Pittenger and Max Homer, School Law Information Exchange,* Vol. XIII, No. 10) the court ruled that this function is "purely ministerial. That is, an act the secretary is required to perform on a given set of facts in obedience to the act (School Code)."

4:16 Who is responsible for the registration and record of the certificates of the district's teachers?

Section 1212 of the Public School Code requires that the district superintendent shall keep an accurate record of all valid certificates held by the teachers of the schools within his jurisdiction.

SCHOOL LAW

Chapter V

Teachers

5:1 Is there a legal definition of a teacher in Pennsylvania?

The Public School Code, in Section 1141, defines a teacher as a professional employe, temporary professional employe, substitute or instructor in the public or private schools within the commonwealth who devotes 50 percent or more of his or her time in teaching or other direct educational activities. And, to clarify its definition, the School Code lists examples of teachers as: classroom teachers, demonstration teachers, museum teachers, counselors, librarians, school nurses, dental hygienists, home and school visitors, all of which must hold a proper certificate.

5:1.1 Is there a difference between "teacher" and "professional employe"?

The term "professional employe" includes all persons who have earned, and hold, tenure rights under the School Code (Sections 1142 and 1201 enumerate categories of professional employes). For example, principals and supervisors are "professional employes" and have tenure: superintendents, assistant superintendents, temporary professional employes (and other administrative positions not covered by certification and tenure) do not have tenure.

5:2 What are the qualifications for a teacher in Pennsylvania?

Under Section 1109 of the Public School Code, to qualify as a teacher one must be of good moral character, at least 18 years of age, and a citizen in the United States of America, and also must be certified in the appropriate areas.

5:2.1 Does a teacher take a Loyalty Oath?

A teacher must, before entering upon his or her duties, take the Loyalty Oath.

5:3 Although the Public School Code indicates that a person must be a citizen of the United States, is it ever possible for an alien to teach in the commonwealth?

Section 1109 of the Public School Code provides an exception, in that the United States citizenship can be waived for exchange teachers not permanently employed, and also for teachers employed for foreign languages. However, in March of 1973, the commonwealth's attorney general issued an opinion to the effect that to deny a person a teaching certificate on the basis that he or she was not a citizen of the United States is a violation of that person's human rights. Hence, the citizenship requirement is no longer valid based on that opinion.

5.4 What is the procedure for a board of school directors that has employed a teacher who is not legally qualified?

It would appear imperative that the superintendent of schools assure the school board that the applicant is properly certificated before nominating same to the school board. Consistent interpretation of the code indicates that a teacher must hold a certificate at the time he begins his teaching duties. In a related court decision it was decreed that "No contract exists when a professional employe is employed without complying with statutory requirements," which would, of course, include proper certification. Lacking such protection, the teacher may be immediately dismissed and need not be afforded the exacting dismissal procedures under the Teacher Tenure Act.

5:5 What recourse does a board of school directors have if a teacher, once elected, fails to complete a contract or an agreement to teach?

The Public School Code provides, in Section 1122, that "when the teacher refuses and wilfully neglects to perform the duties to which he is assigned and for which he is properly qualified under his teacher's certification, he may be dismissed after proper notice and hearing." In an even more extreme instance, the courts have declared that, "When a public school teacher, by his actions, abandons his teaching contract and the school board, by its actions, acquiesces therein, the contract is rescinded." (*Jacobs vs. Wilkes-Barre Township School District*, 355 Pa. 449, 50 A 2nd 354, 1966)

5:6 What is the procedure for the revocation of the teacher's teaching certificate?

Section 1211 of the Public School Code indicates that a teaching certificate can be annulled by the secretary of education for incompetency, cruelty, negligence, immorality or intemperance, after proper hearing, of which reasonable notice in writing must be given to the parties concerned.

5:7 May a relative of a school board member be employed as a teacher by such board?

Yes. However, the Public School Code, in Section 1111, provides that no relative (defined as father, mother, brother, sister, husband, wife, son, daughter, stepson, stepdaughter, grandchild, nephew, niece, first cousin, sister-in-law, brother-in-law, uncle, or aunt) may be so employed unless such teacher receives the affirmative vote of a majority of all members of the board, other than the member related to the appointee who shall not vote.

5:8 May a teacher be suspended?

Teachers, or professional employes, may be suspended or furloughed because of declining enrollment or alteration in the educational program. (This subject of suspensions is a somewhat complex issue that was the topic of a legal research memo published in the July-August 1976 *PSBA Bulletin*. Refer to that article for relevant case law.) The following principles apply to such procedures:

- Department approval not required for suspensions.
- Curtailment of program generally does not require department approval.
- Temporary professional employes do not have seniority rights.
- Tenure controls seniority rights.
- School boards have discretionary power under declining enrollment.
- Professional employes are retained on basis of seniority acquired in school district of current employment.
- Ratings control suspension — seniority merely given consideration.
- Experience is a critical element of rating, and rating as a satisfactory employe must occur in district of current employment.
- Order of suspension controls order of reinstatement — not ratings.
- School Code does not control layoff order for nonprofessionals.

5:9.1 May a teacher in Pennsylvania administer corporal punishment to a pupil?

Yes, under reasonable circumstances. Important to see 2:53 and 2:54, also.

5:9.2 Does a school board have authority to establish the parameters for pupil discipline and punishment?

Yes. Section 510 of the School Code provides that a school board has the authority to establish reasonable rules and regulations regarding the conduct and deportment of pupils while they are under the supervision of the school. See also 2:54.

5:9.3 What is meant by "in loco parentis" in connection with pupil discipline?

Section 1317 of the School Code defines this as the granting to teachers and administrators in the public schools the same authority as to conduct and behavior over pupils while in attendance at school, that parents or guardians have over their charges.

5:10 If a teacher inflicts corporal punishment upon a school pupil and subsequently is charged by the parent with an assault, is the school board also legally liable?

Yes. School districts can be held liable for the negligence or malfeasance of its officials or agents. See also 2:34.

5:11 Must a teacher in Pennsylvania take an oath to uphold the Constitution of the United States?

Yes. Section 701.05 of the Public School Code makes such an oath mandatory and provides the wording for the oath.

5:12 How may an applicant for a teaching position secure a teaching certificate in Pennsylvania?

The Pennsylvania State Board of Education, to simplify this process, adopted a policy of "Program Approval" under which a school of education, if its program has Department of Education approval, submits a list of students who have satisfactorily completed an "approved program." The Department of Education, upon receipt of this certified list, issues the certificate. The college then follows up by sending the student's college course records. However, the normal practice is for a student, graduating from an accredited college, to complete an application for a Professional Personnel Certificate and send it, with credentials, to the Division of Teacher Certification, Bureau of Teacher Education, Department of Education, Box 911, Harrisburg, Pa. 17121. (Section 1204)

5:13 May a teacher in Pennsylvania teach a subject not listed on the face of his certificate?

No. The Public School Code states that no teacher shall teach, in any public school, any subject which he has not been properly certificated to teach.

5:14 Is there any penalty for employing an uncertified teacher or using a certified teacher in a position for which he or she holds no certification?

Yes. The Public School Code provides that, in such cases, the district's instruction subsidy payment will be reduced in an amount equal to the minimum mandated salary for the position in question less the product of the district's aid ratio times such minimum mandated salary. (Section 2518)

5:15 Are teachers required to submit to a medical examination?

Yes. Such examinations may be required before employment. Also, X-ray examinations are required every two years and additional medical examinations may be required at other times as the school board might direct. Certain tests can be substituted for X-ray if required for medical reasons. (Section 1418)

5:16 Is a teacher a public employe?

Yes. School boards are agents of the state, and employes of a school board, as a result, are state, or better, public employes.

5:17 What are the legal requirements when a teacher resigns his position?

A written notice of resignation, setting the effective date of the resignation, shall be filed with the school board at least 60 days prior to the day of termination. The determination has been made that resignation differs from abandonment in that it is a formal relinquishment, whereas abandonment is merely a voluntary relinquishment through nonuse.

5:18 Are Pennsylvania teachers Civil Service employes?

No.

5:19.1 What is the law concerning a teacher who enters or is engaged in military service?

The Public School Code specifies that anyone regularly employed and who volunteers or is inducted, shall, within 30 days, so notify the board which shall verify the matter, whereupon the member is considered to be on leave of absence for the entire duration of such service, assuming that the employe promises in writing to return for one year. (Section 1176)

5:19.2 May a teacher who is a member of an organized militia or reserve force receive a leave of absence?

Yes. The Public School Code states that any school employe on active military service of the United States or of the commonwealth shall be considered to be on military leave of absence.

5:19.3 May a teacher, or other school district employe, receive full pay while on military leave of absence for reserve duty?

Yes. In a 1976 case (See *School Law Information Exchange*, Vol. XIII, No. 58) involving the Tyrone School District, the Commonwealth Court ruled that the employe is entitled to receive whatever military pay is forthcoming in addition to regular pay while on leave of absence for reserve duty.

5:20.1 May a teacher be sued in civil court by reason of alleged negligence or other act resulting in accidental bodily injury to a pupil?

Yes. The general immunity of the state does not protect the teacher in cases of negligence. (*Guerrieri vs. Tyson*, 147 PA Sup. 239, 24 A 2d 468, 1948) However, this general immunity of the state from suit was substantially altered by the *Ayala vs. Philadelphia City School District* case. (See also 2:34).

5.20.2 What constitutes "negligence?"

In the *Thompson vs. Board of Education* case, the court defined negligence as failure to act as a reasonably prudent person would have acted in the situation. (*Thompson vs. Board of Education*, 280 NY 92 NE 2d 796, 1939)

5:21 May a Pennsylvania teacher become an "exchange teacher?"

Yes. During the time as an exchange teacher, the teacher is considered to be in regular full-time daily attendance, with all associated and salary rights. (Section 1109, 522)

5:22 Are teachers exempt from jury duty?

No such exemption is found in school law. However, courts have shown a tendency to accept a request for excusal from jury duty from teachers as a legitimate request. (Misc. Section 701.15)

5:23 May a teacher serve on a school board?

Yes. However, no teacher shall be eligible for the position of school director in the same district in which he teaches. (Section 322)

5:24 May teachers engage in political campaigning or political activities?

Teachers and other public employes may engage in political campaigning and political activity only to the degree that such activity does not violate Section 1701 of Act 195 or the state's little "Hatch Act."

5:25 Do teachers have the right to strike?

Yes, a limited right. Act 195, the Public Employe Relations Act, permits strikes by employes only after following the impasse procedures outlined within sections thereof, unless a no-strike provision is contained in the agreement with the employer which, if so stated, would prohibit strikes for any reason during the term of the agreement.

5:26 Who are considered to be "substitute teachers?"

In the Public School Code, the term "substitute" means any individual who has been employed to perform the duties of a regular professional employe during such period of time as the regular professional employe is absent or on sabbatical leave or for other legal cause authorized and approved by the board of school directors or to perform the duties of a professional or temporary professional employe who is absent. (Section 1101)

5:27 Can a teacher's age be used as a qualification of employment or promotion?

Yes. Section 1109 of the Public School Code sets a minimum of 18 years of age in order for a person to be certified and, hence, to be employed as a teacher. However, in Section 1122 we find that a school board may adopt a policy to terminate the service of a professional employe who becomes 62 years of age if he or she is not a contributor to social security, or at age 65 or at an age when the employer is eligible for full social security.

5:28 May a school district refuse to employ a qualified teacher on the basis of religion, race, sex, or national origin?

The Public School Code, Section 725.05, directs that there shall be no such discrimination in the selection of teachers on the basis of race, color, creed, ancestry, sex, or national origin.

5:29 May a school district require a teacher applicant to submit a photograph with his application?

The law is apparently silent on this point except insofar as it states that districts are not permitted to use any form of application containing questions or entries regarding race, color, etc. If such a case arose, it is conceivable that a photograph might be considered to provide such information.

5:30 Does Pennsylvania law guarantee a teacher a 30-minute free lunch hour period?

Yes. Section 1504 of the School Code guarantees professional and temporary professional employes a lunch period, free of supervision or other duties, of at least 30 minutes.

5:31 Can teachers be prohibited by boards of school directors from undertaking outside employment or "moonlighting?"

The code makes no such stipulation. It should be noted, however, that recent high court rulings indicate that mere moonlighting is insufficient to justify dismissal, unless the district can demonstrate incompetency in the classroom as a result of the moonlighting.

5:32 Does the Pennsylvania Public School Code prevent a teacher from selling, at a profit to himself, musical instruments, books — such as encyclopedias — to the children or parents of children in his class?

Yes. Section 808 of the School Code states that no teacher may act as an agent for books or supplies in the district in which he teaches or in which he taught the previous year.

5:33 Is there a standard for the daily teaching load of a teacher?

The Public School Code defines the minimum length of the pupil instructional day, but does not establish the length of a teacher day. (Section 1504)

5:34 In those systems that are on "double session," may a teacher teach both sessions?

No. In such cases, the Public School Code, Section 1505, stipulates that teachers shall not be employed for both sessions, but may be required to serve every school day for the regular number of hours of the full session.

5:35 What is the law regarding the filing of grievances by teachers?

Section 3302 of the School Code provides for a grievance panel procedure which is apparently still applicable to employes not covered by Act 195. Grievances under collective bargaining agreements arising out of Act 195 are handled in a manner mutually agreed upon between the employer and the bargaining agent of the employes. (This subject is discussed at length in the PSBA Act 195 Guidebook.) Note, however, that irrespective of how the two parties arrange for handling of grievances, such grievances that have to do with the interpretation or application of the terms of the contract must be ultimately resolved through binding arbitration which is binding on both parties.

5:36 May a teacher be required to work on his or her Sabbath?

No.

5:37 Are the summer school expenses of a teacher deductible for federal income tax purposes?

Yes. Summer school and any other courses, properly authenticated, taken toward betterment of position or performance are deductible if paid by the employe. Such expenses are not deductible if paid by the school district.

5:38 Do teachers have the right to duplicate copyrighted material in books or musical compositions for use in their classes or pupil groups without authorization of the copyrighter?

No. Authorization is required from the holder of the copyright.

5:39 Are professional teacher's associations required to register under the labor laws?

Any and all Pennsylvania teachers' associations are required to register and be recognized under Act 195, the Public Employe Relations Act, if they desire to proceed in negotiations according to the act.

5:40.1 Is there a separate certificate for substitute teachers?

No. Substitute teachers must be properly certificated, as are all teachers.

5:40.2 Does a teacher have the right to examine his or her personnel files in the school office?

No. In April 1973, and in answer to a request of the secretary of education, the Department of Justice ruled that a teacher in the public schools has the right to examine his or her personnel files. However, in a court decision involving the West Shore School District (See *School Law Information Exchange*, Vol. XII, No. 5) the court ruled that personnel files are not "public records".

TEACHER TENURE

5:41 Does teacher tenure extend to all public schools?

Yes. Teacher tenure, as provided for in Section 1121 of the School Code, applies to all public schools within the commonwealth.

5:42.1 What is the length of the probationary period for beginning teachers?

Two years of satisfactory service to be served in the same school district of this commonwealth. The two-year requirement in the same school district was the subject of an opinion issued in March 1973, by the attorney general of the commonwealth.

5:42.2 Does a school board have the option to extend the probation period to three, four or five years?

The probation period is fixed by law at two years and is not fixed by the board of school directors except in special circumstances. A teacher may have up to six years to obtain permanent certification even though tenure is acquired in two years. A school board may extend the probationary period for cause on a year-to-year basis if the choice is dismissal or extension of the probationary period. Explicit action is required.

5:43 After serving the probationary period, does the teacher automatically receive a professional contract?

The school directors in all school districts shall enter into contracts, in writing, with each temporary professional employe who has satisfactorily completed two years of service in the school district. The contract shall continue in force year after year. The form of the contract to be used is spelled out in Section 1121 of the Public School Code.

5:44.1 Must a teacher ever serve a second probationary period?

A teacher is placed on probation when he or she is first elected to a teaching position in Pennsylvania. After serving a probationary period of two years in the same school system, the professional employe need never again serve a probationary period when employed by any other Pennsylvania school district. (Section 1108b)

5:44.2 How and by what method are probationary teachers evaluated?

Section 1123 of the School Code details the evaluation procedure as follows:

> "The professional employe or temporary professional employe shall be rated by an approved rating system which shall give due consideration to personality, preparation, technique, and pupil reaction, in accordance with standards and regulations for such scoring as defined by rating cards prepared by the Department of Education. Rating shall be done by or under the supervision of the district superintendent or, if so directed by him, the same may be done by an associate superintendent, an assistant superintendent, a supervising principal, a supervisor, or a principal who has supervision over the work of the employe who is being rated. This rating must be done at least once a semester."

5:44.3 After the probationary period, what is the procedure for placing the teacher on tenure?

A temporary professional employe automatically becomes a tenured professional employe when his work has been certified as satisfactory by the superintendent during the last four months of the second year of employment with that school district. Notice of the attainment of this status shall be sent to the secretary of the school district, recorded in the records, and written notification sent to the employe. After attainment of this status, the temporary professional employe shall be tendered a regular professional employe contract as provided in Section 1108 of the Public School Code.

5:44.4 What happens if a temporary professional employes fails to receive a satisfactory rating during the last four-month period of his or her probationary period?

Should a temporary professional employe fail to receive a satisfactory rating for the last four-month period, he need not be offered a regular contract; however, he must be given a written statement, signed by the president and the secretary of the board, setting forth specifically the reason for such refusal and be granted a hearing, if requested.

5:45 Who has the final authority on the appointment of a teacher to tenure?

The board of school directors has the final decision.

5:46.1 May a teacher on tenure be removed from his or her position after securing tenure?

Yes, for the reasons cited in law. (Section 1122).

5:46.2 What are the reasons for which a professional employe may be dismissed?

Section 1122 of the School Code lists that the only valid causes for termination of a contract with a professional employe shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, advocation of or participating in un-American or subversive doctrines, persistent and wilful violation of the school laws of this commonwealth on the part of the professional employe. A tenured professional employe may not be dismissed by the school board until a detailed written statement of the charges against him is given, and he is granted a hearing conducted before the board at a special or regular meeting.

5:46.3 Is a teacher being dismissed entitled to counsel at such a hearing?

The professional employe may appear alone at the hearing, or with counsel. (Section 1127)

5:46.4 May the teacher charged for dismissal be suspended pending the hearing?

The Pennsylvania School Code is silent as to the suspension from duty of a professional employe charged for dismissal. However, since most school boards follow this practice in dismissal cases, courts have ruled that the employes' salary and other emoluments remain in force until the school board takes final dismissal action after the required hearing is held. (See also 5:60)

5:46.5 In dismissal cases, before whom shall the hearings be held?

Section 1127 of the School Code specifies that dismissal hearings shall be before the board of school directors. (See also 4:8.5)

5:46.6 Is a board of school directors required to hold a hearing for a teacher on tenure, based on charges brought by an individual board member?

No. No one individual school board member has authority to act for the school board. No action is valid without a vote of the majority of the board.

5:47 What is the procedure in the case of an acquittal of a teacher in a dismissal case?

In all cases where the final decision is in favor of the professional employe, the charges made shall be physically expunged from the records of the board of school directors, and a complete official transcript of the records of the hearing shall be delivered to the employe against whom the charges were made. In all such cases there shall be no abatement of salary or compensation.

5:48 Is there any appeal from the decision of the board of school directors?

Yes. Under Sections 1131 and 1132, an appeal may be taken to the secretary of education and, if either party is dissatisfied with the decision of the secretary of education, the dissatisfied party has further recourse to the courts. (Section 1132)

5:49 How may a principal attain tenure?

All certificated employes shall serve at least two years of satisfactory service in the same school district within the commonwealth. Usually, tenure status of a principal has been earned as a beginning teacher.

5:50 Has a board of school directors authority to adopt regulations prohibiting the employment of married teachers?

No.

5:51 May a board of school directors dismiss a teacher without detailing charges and without a hearing, by paying him a year's salary for not teaching?

No. All teachers have the right to due process of law. Also, such a payment presents a number of other kinds of problems.

5:52 What is the status of a temporary professional employe who has served the full probationary period, has been retained in the school system beyond the probationary period, but has not been notified of his or her status?

If he or she has not been notified of his or her status, it shall be taken for granted that the rating was satisfactory and tenure status has been granted.

5:53 During the probationary period, is a temporary professional employe at liberty, even in the middle of a school year, to leave the employment of a school system?

A temporary professional employe's contract can be terminated by written resignation presented sixty (60) days before the resignation becomes effective.

5:54 What action must a school board take to dismiss a teacher at the termination of the probationary period?

If the rating was satisfactory, the temporary professional employe is automatically entitled to tenure and the school board is required to follow dismissal procedures outlined by the School Code in Section 1127. If the rating was unsatisfactory, dismissal may be made, as provided in Section 1108a, by serving notice on the employe within 10 days of the rating, in writing, and granting a hearing under the local agency law if it is requested.

5:55 What procedures accompany the dismissal notice of an unsatisfactory teacher at the end of the probationary term?

The temporary professional employe is notified of his or her unsatisfactory status and that his or her contract is terminated. A hearing under the Local Agency Law may be held if requested by the employe.

5:56 What action is necessary if a school district wishes to dismiss a probationary employe during the probationary period?

A temporary professional employe may be dismissed only if he is notified, in writing within 10 days after being rated, that his services are unsatisfactory. The employe shall be given a hearing, if so desired.

5:57 May the principal omit a teacher's name from the evaluation list to be submitted to the district superintendent?

No. All names must be submitted and rated properly.

5:58 Does a teacher acquire tenure only in a certain grade in elementary school or in a certain field in junior or senior high school?

Tenure is granted as a professional employe without regard for level if he or she has completed the necessary requirements. A teacher need earn tenure only once in Pennsylvania under present law.

5:59 What is the status of a temporary professional employe who enters military service before the expiration of the probationary term?

The employe must finish the probationary requirements upon return to the same school district from which leave was taken.

5:60 May a teacher's position be abolished by a board of school directors?

Section 1124 of the School Code authorizes a board of school directors to suspend the necessary number of professional employes for any of the causes enumerated as follows:

1. Substantial decrease in pupil enrollment in the school district.
2. Curtailment or alteration of the educational program.
3. Consolidation of schools.

A teacher so suspended, shall be placed on the school district's suspended list and be offered first preference whenever a position in the teacher's field opens. Section 1125 of the School Code provides that "suspended professional employes shall be reinstated in the inverse order of their suspension." Approval of the Department of Education is not required for such suspensions.

5:61 Is there a difference between seniority for reduction in force purposes and tenure seniority?

Reduction in force affects areas of certification and experience. Thus, temporary professional employes have no seniority for reduction in force purposes. Certified and qualified tenured professional employes are then considered in their areas of certification and experience within the district of employment based upon ratings and seniority if there is no substantial difference in ratings. (See also 5:8)

5:62 What happens to teachers on tenure when school districts reorganize to form a new district?

Section 1125 of the School Code provides that, when a reorganization is effected, all professional employes shall retain the seniority rights they had at the time of such merger. If suspensions are to be made, they must be based upon seniority and teacher rating incorporated in the rating cards.

5:63 May the statutory provisions of tenure be altered by mutual agreement between the board and the teacher?

No. The contract is spelled out in Section 1121 of the Public School Code and none of the provisions of the contract or agreement may be waived either orally or in writing.

5:64 Does the board of school directors have the right to dismiss a teacher who is on tenure but who refuses to answer the board's question regarding membership in the communist party?

No. Insubordination is not grounds for dismissal under present law.

5:65 May a teacher on tenure resign and leave the school system at any time, even in the middle of the school year?

A professional employe may terminate his or her contract by written resignation presented 60 days before the resignation becomes effective. A school board may, by law, require the resigning professional employe to serve out the 60-day period or may waive the requirement.

5:66 Can tenure be extended to part-time teachers?

No. The teacher must be a regular full-time employe.

5:67 If a substitute teacher is appointed to a school system, may he or she use the substituting time as part of his or her probationary time?

No. The teacher must be appointed as a full-time temporary professional employe.

TEACHER SALARIES

5:68 What are the minimum teacher salaries guaranteed under the present law?

The mandated minimum salary varies in accordance with the classification attained by each professional employe. The scheduled minimum salary for each class of teacher as mandated in Section 1142 of the Public School Code, is as follows:

Class A — Teachers holding a standard certificate — $6,000

Class B — Teachers holding a college certificate — $6,000

Class C — Teachers of exceptional children holding a standard certificate — $6,200

Class D — Teachers of exceptional childen holding a college certificate — $6,200

Class P — Vocational teachers holding a standard certificate valid for the subjects or grades in which the teacher is giving instruction and who is employed for the entire calendar year because of seasonal activities — $7,250

5:69 Is there a mandatory salary increase for a master's degree?

The Public School Code provides that each professional or temporary professional employe who holds a master's degree or its equivalent, shall be awarded two additional steps of $300 each above the maximum step and salary shown on the schedule for his classification. Thus, a Class B teacher holding a college certificate is guaranteed a minimum of $9,600 after 12 years' service, while the same teacher holding a master's degree is guaranteed a minimum of $10,200 after 14 years of service. A new professional employe, holding a master's degree, must be placed at least one step higher on the salary schedule than an employe holding only a bachelor's degree and with the same years of service within the district. (Section 1142)

5:70.1 How many increments are mandated in a salary schedule?

No specified number. Section 1142 of the Public School Code specifies that a professional or temporary professional employe continuing employment in the same district is entitled to an annual service increment of at least $300 until such increased salary equals the highest salary mandated on the state minimum salary schedule for his classification.

5:70.2 How does a school board determine the salary step for a teacher entering a district's employ for the first time?

Section 1149 of the School Code provides that, where a teacher enters a new district he or she shall enter at a point in the schedule to be agreed upon between said teacher and the employing district, which agreement shall be made a part of the contract between them.

5:70.3 Are employes who have been rated as unsatisfactory entitled to the increments?

No. Section 1152 of the School Code states that: "No district is required to pay increments to any teacher rated unsatisfactory during his period of probation."

5:71 Is this salary schedule "automatic" or can a "merit increase" principle be used?

The salary schedule established by the state is a mandated minimum and, therefore, automatic as a minimum. There is no requirement, however, that a school board must pay all teachers in its employ increases of like amounts except within the mandated increments. In other words, the board is entitled, in its discretion, to increase the salary of any teacher or any group of teachers without increasing the salaries of others beyond the mandated increments.

5:72 Can a board of school directors, having adopted a schedule higher than the state minimum, reduce such a schedule back to the state mandated schedule?

Such an action would be most difficult. The Public School Code states that there shall be no demotion of any professional employe either in salary or in type of position without the consent of the employe or, if such consent is not received, such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe. (Section 1151)

5:72.1 Is a salary schedule required?

So long as the minimums set forth in Section 1142 of the School Code are met, the school district is not required to have a salary schedule — many do not.

5:73.1 How does attaining a master's degree affect salary?

Section 1144 of the School Code provides that if a professional or temporary professional employe receives a master's degree, while in the employ of a school district so as to entitle him to a salary increase, such employe is entitled to the increase commencing with the next school term following the one in which his eligibility was established. Any temporary professional employe who holds a master's degree at the time of initial employment shall receive, beginning with the second year of employment, $300 in excess of what he or she would otherwise be entitled. Vocational and applied arts teachers who earn an additional 30 hours of credit in professional education in the teaching field in which they are engaged, or in a related field, are entitled to the same minimum salary and annual increments as are other teachers who hold the master's degree.

5:73.2 Must an applicant for a master's equivalency certificate be employed in a public school, or may a teacher in a nonpublic school qualify?

Since master's equivalency certificates are issued for pay purposes only, such certificates are granted to public school teachers only.

5:74.1 May a school board exceed the state-mandated salary schedule?

Section 1142 of the School Code authorizes a board, at its discretion, to adopt a schedule in excess of the minimum schedule mandated in the Public School Code. See also 5:72.1.

5:74.2 May a school board grant and later discontinue a temporary or emergency salary increase?

Yes. Section 1152 of the School Code permits a board to grant temporary or emergency increases and discontinue them at the end of the period for which they were granted and the teacher or teachers may not take any legal steps to prevent the action.

5:75 **What is the definition of "entering step, step attained and years of service" as applied to the salary schedules?**

Pursuant to Section 1142 of the School Code, all school districts shall pay all professional employes the minimum salaries and increments for the school year of 1969-70 and each school year thereafter, as provided in the classification of teachers and in the state minimum salary schedule. In addition, the step which the professional employe has attained by agreement or by years of experience within the school district whichever is higher, each step constituting one year of service. **Entering Step** — The step on the school district's salary schedule, as evidenced by the employe's contract, at which salary the employe agrees to enter the service of a school district. If a local district has not adopted a salary schedule above the state-mandated schedule, the state schedule shall apply. This entering step will be at step one of the schedule if jointly agreed to by the employe and the school board. **Step Attained** — The step on the school district's salary schedule, determined by years of service within the school district beyond the agreed-upon entering step. **Years of Service** — The actual number of years of experience with the employing district, whether continuous or interrupted, from the time of initial contract with the district or its components.

5:76 **May a board of school directors give credit for teaching experience outside the school district?**

This is a matter of school board discretion. Section 1149 of the Public School Code provides that, when such teachers enter a new district they shall enter at a point in the schedule to be agreed upon between said teacher and the employing district which agreement shall be made a part of the contract between them. By such initial agreement, the school board, in exercising its option to grant credit for experience in other districts or occupations or for other reasons, may grant full credit, no credit, or may prorate the years of service in another school district.

5:77 **Is the school district required to adopt "standards of promotion" and have the teachers participate in formation of such standards?**

No. Standards of promotion for teachers are not mandated school district obligations; therefore, the teachers are not required to participate in the formation of standards and the district is not obligated to adopt a set of standards.

5:77.1 **Is there a Pennsylvania Commission on Professional Standards and Practices?**

Act 141 (1973) established a 16-member Professional Standards and Practices Commission, the members of which are appointed by the governor. The commission includes eight teachers, three administrators, two faculty members and an administrator from higher learning, one college student, and a parent. It makes recommendations to the State Board of Education.

5:78 Are teacher salary records public records?

Yes. The attorney general of Pennsylvania, in a ruling issued in April 1973, stated that salary records of the public schools and state-owned schools are public records and are available for inspection. This was confirmed in a Commonwealth Court Decision involving the Hopewell School District. (See *School Law Information Exchange*, Volume XII, No. 4.)

5:79 What is the minimum salary of the substitute teacher?

The School Code, in Section 1148, provides that substitutes shall be paid not less than the minimum salary provided for by the state-mandated schedule. In the event the substitute is employed for less than a full school year, the proportionate part of such minimum salary equal to the proportionate part of the school year during which he or she was employed, arrive at by dividing the number of days during which a substitute was employed by the total number of days the schools of the district were in session during the school year.

5:80 May a school board deduct a day's pay from a regular teacher's salary for nonexcused absence when a substitute was paid to replace the teacher on that day?

Yes. The Public School Code makes it very clear that the teacher must have a valid reason for absence. This deduction can be made whether a substitute was or was not employed as a replacement for the regular teacher on a given day of absence. Section 1153 of the School Code states: "Whenever a teacher is prevented by sickness or some other unavoidable circumstance from following his or her occupation, the school district may, at the discretion of the directors, make such payments of compensation during the period of absence from duty as the exigencies of the case may seem to warrant. In the case of sickness, no payments shall be made unless the teacher shall have furnished to the board of school directors a certificate from a physician stating the nature of the sickness and certifying that he or she was unable to perform duties as a teacher."

5:81 Must the board of school directors adopt a salary schedule for the school principal?

There is no requirement to adopt a salary schedule for any employe so long as mandated minimums are met. The mandated salaries, provided in the School Code, shall be applicable to all professional and temporary professional employes within their respective class.

5:82 Does Act 195 make a distinction between a salary schedule for principals and teachers?

Act 195, the Public Employe Relations Act, makes a clear distinction between a teacher and a supervisor. Under the School Code, supervisor is a term very often applied to professional employes who have no managerial functions but who perform as technical specialists. Under Act 195, the term supervisor means that an employe does have managerial and supervisory functions and is excluded from a bargaining unit of professional employes.

5:83 What salary does a professional employe receive while on sabbatical leave?

Section 1169 of the School Code stipulates that a person on sabbatical leave shall receive one-half of his or her regular salary. There is no discretion on this.

5:84 How often are teachers supposed to be paid their salaries?

Section 1121 of the Public School Code, states that the salary shall be paid monthly or semimonthly during the school term or year.

5:85 May teachers be required to sign a waiver or release as a condition of a salary payment?

Apparently not, since the word "waiver," in the legal sense, is defined as the intentional and voluntary relinquishment of a known right.

5:86 May teachers be reimbursed by boards of school directors for traveling expenses?

Yes. Actual travel expenses are allowed with mileage for travel by car at the rate of 10 cents for each mile in going to and returning from each authorized meeting that is regarded as being educationally or financially advantageous to the school district. The School Code further states, in Section 517, that such reimbursement will be made if the following provisions have been satisfied: 1) That prior authorization to incur said expenses has been previously given by the board of school directors; 2) that advanced payments may be made upon presentation of estimated expenses to be incurred, to be followed by a final itemized, verified statement of such expenses actually incurred upon return from such conventions, and a refund be made to the district of such funds remaining or an additional payment be made to meet the verified expenses actually incurred. (Section 517)

5:87 Should men teachers be paid on a higher salary basis than women teachers?

No. Pennsylvania operates on a single salary program and, furthermore, the Fair Employment Practices Act states that no employer shall discriminate in any place of employment between employes on the basis of sex by paying wages to any employe at a rate less than the rate at which he pays wages to employes of the opposite sex for work under comparable conditions on jobs the performance of which requires comparable skills, except where such payment is made pursuant to a seniority training or merit increase system which does not discriminate on the basis of sex. (Section 3763)

5:88 Are salaries of teachers to be paid when a school might be closed due to an epidemic?

Yes. According to Section 1153 of the School Code, when a board of school directors is compelled to close any school or schools on account of contagious disease, the destruction or damage of the school by fire or other destruction causes, the school district is liable for the salaries of the teachers for the terms for which they were engaged.

5:89.1 Are there any statutory provisions setting the length of teacher's workday?

No.

5:89.2 Does the Public School Code define a pupil instructional day?

Yes. Unless otherwise determined by the board, the daily session of school shall open at 9:00 a.m. and close at 4:00 p.m. with an intermission of one hour at noon, and an intermission of 15 minutes in the forenoon and in the afternoon. (Section 1504)

5:90 Are teachers and other school employes entitled to "vacation time" pay at the time of leaving the school's employment?

No. The Public School Code makes no such provision.

5:91 Is there any statutory limitation on the work load which may be assigned to a teacher?

No, the law does not specify a pupil-teacher ratio. However, teachers who are required, because of additional work, to devote more than the usual number of periods per day to their duties, shall be entitled to a fair increase in compensation to be determined by the board of school directors. (Section 1147)

5:92.1 How many days of "sick leave" may a teacher accumulate?

A teacher is entitled to ten (10) days of sick leave for each school year, these days being cumulative without limit; that is, if a teacher uses no sick leave days during his or her first 10 years of employment, the accumulated total to his or her credit is 100 days.

5:92.2 If a professional employe changes school systems, are sick leave days transferable?

Yes, but only in part. If the teacher moves directly from one school system to another, he or she may transfer accumulated sick leave up to a total of 25 days.

5:92.3 How many days of accumulated sick leave may be used in any school term?

A teacher may use any or all of his or her accumulated leave during any school year. The school board, however, has the right to request medical evidence of illness for such absence.

5:93 May a teacher in Pennsylvania take part in "tax-sheltered annuity" plans?

Yes. Under the provisions of Act 289, signed into law December 6, 1972, Section 1142 of the School Code was amended to permit a school district to make written agreements with employes for the purpose of the school district purchasing tax-sheltered annuities and to reduce a teacher's salary to participate in same. (See Section 513 also.)

5:94 Do salaries of summer school teachers come under the State Salary Act?

No. Teachers so employed are paid an agreed-upon wage.

5:95 What is the basis for the calculation of salary when a teacher fails to complete the full year?

If a teacher is employed for less than a full school year, he is entitled to a proportionate salary based on the proportionate part of the school year during which he was employed. (Section 1148)

5:96 Should a new contract be issued every time a teacher's salary is changed?

No. The contract is a continuing one from year to year. New contracts are not required to be executed each year. The board of school directors has the right to increase the compensation over the compensation stated in the contract and in keeping with the provisions and proper operation of the established salary schedule. (Section 1121)

PUBLIC SCHOOL EMPLOYES' RETIREMENT SYSTEM

5:97.1 What function does the Public School Employes' Retirement System perform?

The Public School Employes' Retirement System of Pennsylvania began operation July 1, 1919, being created by an act of the Legislature which was passed on July 18, 1917. Its primary function is to provide and administer a safe retirement program for public school employes.

5:97.2 Where may one contact the Public School Employes' Retirement Office?

The address is:
Pennsylvania Public School Employes' Retirement Board
City Towers
Harrisburg, Pennsylvania 17101
The telephone number is: (717) 787-9091

5:98 What security is provided for members of the retirement system?

The Pennsylvania Public School Employes' Retirement System is designed to be a full reserve plan, self-perpetuating.

5:99.1 How much do new members contribute?

An active member contributes 5.25 percent of his or her salary, except for those prior service members classified as T-A or T-B members (all others are class T-C).

5:99.2 What contribution is made by the school district and the state?

The contributions made by the state and the local school districts are determined each year by the actuary of the Retirement Board, George B. Buck, Inc. New York City. The figure set for the 1976-77 school year, paid respectively by the state and local district, is 6.655 percent of the total employe payroll of the school district.

5:100 What are the qualifications for full retirement?

Members of Class T-A may qualify at age 62 with at least three years of service or after 35 years of service, regardless of age.

Members of Class T-B may retire at age 62 with at least three years of credited service.

Members of Class T-C may take retirement at age 62 with at least three years of service, or at age 60 with at least 30 eligibility points (30 years of service), or at any age upon accrual of 35 eligibility points. Most present contributors belong to this class.

5:101.1 What benefits could a member receive who has accumulated 25 eligibility points (completed 25 years of credited Pennsylvania service) and has reached the age of 55 while yet in service?

After July 1, 1976, any member who has attained age 55 and acquired 25 or more eligibility points may choose to take a benefit that is decreased by a percentage determined by multiplying by .25 percent the number of months remaining to superannuation age.

5:101.2 How is "final salary" determined?

The final salary is found by averaging the total salaries earned during any three nonoverlapping periods of 12 consecutive months.

5:101.3 When a member of the retirement system retires, will he or she get a flat amount monthly or are there other options?

A retiring member may elect to receive a regular maximum retirement allowance or may choose from four other options which provide varying degrees of protection to his or her beneficiary.

5:101.4 How is the maximum annual retirement allowance computed?

The maximum annual allowance is now based on this formula: two percent times the final average salary times the total years of credited service.

5:102 Will receiving a supplemental pension affect a retiree's retirement allowance?

There will be no reduction of the state retirement allowance for members having supplemental pensions.

5:103 Is it permissible for a retired teacher to serve as a substitute in a public school or as a home instruction teacher of a physically handicapped child?

A member receiving a monthly withdrawal allowance of a monthly superannuation retirement allowance may be employed part time, without loss of annuity, in any teaching or school position for a period not exceeding 60 ~~70~~ days in any one school year.

5:104.1 If a member should die while yet in active service, is a death benefit available to the member's beneficiary?

Yes, the death benefit payable to the beneficiary is determined under option 1 of Act 96, 1975, Section 8345.

5:104.2 If a person is on retirement and his or her beneficiary dies, may another beneficiary be named?

Yes. If the retiree selected option 1 and the beneficiary dies, any balance in the account upon the retiree's death will be paid over to the retiree's beneficiary or estate. But, if the retiree chose option 2, 3, or 4 a new beneficiary may be chosen and a new computation will be made of the retiree's allowance based on the age of the new beneficiary.

5:105.1 May a substitute or part-time teacher join the Public School Employes' Retirement System?

Yes. Under Act 96, part-time employes may obtain prorated credited service provided they work at least 80 days or 500 hours in a year (12 consecutive month period).

5:105.2 May a nonteaching employe of a school system become a member of the Public School Employes' Retirement System?

Yes. All public school employes are eligible for membership.

5:106 May a member in service borrow from his accumulated deposits in the Pennsylvania Public School Employes' Retirement System?

No.

5:107 May a board of school directors force a teacher to retire at age 65?

Yes. (Section 1122)

5:108 Is the retirement income of a retired teacher subject to federal income tax?

Yes; however, the total amount of the member's contribution to the fund is a deductible item and may be deducted over a three-year period after retirement.

5:109 What is meant by "vesting?"

"Vesting" in the Public School Employes' Retirement System means the right of a member who separates from service after having 10 years or more credited service, to leave his accumulated deductions (contributions with interest) in the fund and, upon reaching superannuation retirement age, make application to receive a retirement allowance.

5:110 Can teachers who are members of the Pennsylvania Public School Employes' Retirement System retire on disability?

Yes. After five or more years of credited service, any member, not eligible for a superannuation allowance and who becomes mentally or physically incapacitated, is eligible for a disability retirement allowance.

5:111 How long may employes leave their own contributions in the retirement system after they cease to be active Pennsylvania public school employes?

After 10 years of credited service, the fund may be vested. If fewer than 10 years of service, the fund will not draw interest if the employe ceases to be a member, and it may be withdrawn any time.

5:112 May a teacher increase his total retirement amount (exclusive of Pennsylvania Public School Employes' System) by using a tax-sheltered annuity plan?

Yes. By deferring part of his income into an annuity, he can reduce some of his taxable income to an account to be used during his retirement when his taxable income is less. Act 289, signed into law December 6, 1972, gives legislative approval to tax-sheltered annuities.

CERTIFICATION

5:113 Is Pennsylvania certification required for all public school teachers in Pennsylvania?

Yes. Only those persons holding a valid certificate issued by the Department of Education shall be qualified to teach in the public schools of the commonwealth.

5:114 May a school administrator be employed without holding full certification?

No. Every administrator, principal and supervisor appointed as such must be certified as such by the state. (Section 1109)

5:115 Is there any such thing as an "emergency teaching" certificate?

Yes. An emergency certificate is a permit issued by the secretary of education in cases where the district superintendent certifies that a properly certificated teacher is not available. To qualify for an emergency certificate, a person must hold a baccalaureate degree; however, the secretary of education, upon receiving appropriate proof of the emergency nature of the situation, may issue an emergency permit to teach to a person who does not otherwise qualify. Section 1201 stipulates that the State Board of Education shall provide for issuance of emergency certificates by district superintendents, also.

5:116 Once a certified teacher is employed by a public school, can he teach outside his certification area in that school?

No. A penalty is imposed, under Section 2518 of the Public School Code, on any school board employing any teacher lacking the proper form of teacher certification valid for the subjects or grades in which the teacher is giving instruction.

5:117 In general, what is the basis of college preparation now necessary to qualify for a teaching certificate in Pennsylvania?

A baccalaureate degree is generally the minimum educational background presently required for certification. However, the State Board of Education has adopted a policy under which a school of education, if its program has Department of Education approval, certifies to the Department of Education that the student has satisfactorily completed the approved program and is thereby eligible to be certified as a teacher.

5:118 Is a teaching certificate required for the coaching of a high school interscholastic sport, such as basketball?

No. However, the Pennsylvania Interscholastic Athletic Association rules require the coach to be a professional employe in the school system. Part-time employes may be used as coaches in accordance with State Board of Education Regulations Chapter 5, Section 25 (f) wherein such part-time employes must be certified by the Department of Education and the use of such approved by the secretary of education.

5:119 Is it necessary to pass a state examination such as doctors, dentists, lawyers, etc. do to become licensed to teach in Pennsylvania public schools? schools?

No.

5:120 Is a teacher who is certified in Pennsylvania also certified to teach in other states, such as California and Florida?

Reciprocity of teacher certification with other states is not automatic, but does exist in certain instances. For a specific listing, write the Bureau of Certification, Department of Education, Box 911, Harrisburg, Pennsylvania 17121.

5:121 Is a Pennsylvania teaching certificate required for substitute teaching?

Substitute teachers must hold a valid teaching certificate, as must regular teachers.

5:122 Are Pennsylvania certification requirements applicable to teachers in private and parochial schools of Pennsylvania?

Provisions for certification in parochial and private schools are not provided in the Public School Code.

5:123 Who enforces teacher certification? Is this the responsibility of the State Education Department or a State Professional Standards Commission?

The regulations of the State Board of Education charge the secretary of education with the responsibility "to assure that each professional person is properly certificated for the specific position in which he is employed." Accompanying the charge is the duty to review and investigate alleged violations of certification regulations and to impose the prescribed penalty for such violation. The Professional Standards Commission is advisory only.

5:124 Does Pennsylvania issue internship certificates?

Yes. State Board of Education regulations Chapter 49, Section 91 set conditions for regularly enrolled graduate students of approved universities to serve as interns for one year.

5:125 What are "lapsed" teaching certificates?

When a Provisional or Instructional I Certificate expires and is not renewed or made permanent, the person holding such a certificate immediately ceases to qualify as a teacher in the Pennsylvania public schools. Hence, his or her certificate has lapsed.

5:126 Is there a Pennsylvania certificate for a teaching assistant or teacher aide?

No.

5:127.1 What are the requirements to make an Instructional I Certificate permanent?

The Instructional I Certificate (previously called the Provisional Certificate) is valid for three years of teaching and may be renewed for an additional three years upon completion of 12 semester credit hours of collegiate study. These 12 credit hours may be satisfied, in whole or in part, through in-service programs approved by the Department of Education. To make the Instructional I Certificate permanent; that is, to obtain an Instructional II Certificate, the applicant shall have completed three years of satisfactory teaching on an Instructional I Certificate and shall have completed 24 semester credit hours of collegiate study. These 24 credit hours may be satisfied, in whole or in part, through the taking of approved in-service programs.

5:127.2 If a teacher holds an Instructional I Certificate valid in two teaching areas, and teaches satisfactorily in Pennsylvania for three years in one of the two subject areas, will the certificate be made permanent for both teaching areas?

Yes, if all other requirements are satisfied.

5:128 What is the distinction between the Provisional and Permanent Certificates?

Section 1024 of the Public School Code defines the provisional college certificate, now called an Instructional I, as one issued by the secretary of education to a person who originally meets the basic requirements for certification. Section 1205 of the School Code provides that the secretary of education shall issue a permanent college certificate, or Instructional II, to the holder of a provisional certificate if the holder has completed three years of satisfactory teaching and has satisfied the additional course requirements set forth by the State Board of Education.

5:129 How may "exchange teachers" be certified in Pennsylvania?

"Exchange teachers" may be certified in the usual manner in the commonwealth of Pennsylvania, with the waiving of the citizenship requirement. (Section 1109)

5:130.1 Where may a person secure information on teacher certification?

Information may be obtained from the Bureau of Teacher Education, Department of Education, Box 911, Harrisburg, Pennsylvania 17121.

5:130.2 Does Pennsylvania charge a fee for teacher certificates?

Yes. A nonreturnable $5 fee, payable in advance, is charged for each application.

5:130.3 If a teacher requests permanent certification and at the same time adds an additional subject, is there a double fee?

No. When multiple transactions are requested on a single application form, a single $5 fee suffices.

5:130.4 Suppose the application for a certificate is denied. Is the $5 fee returned?

No. The fee is charged for the evaluation of the application and is not returnable.

Chapter VI

School pupils

6:1.1 What are the ages for compulsory attendance in Pennsylvania schools?

Compulsory school age refers to the period of a child's life from the time the child enters school as a beginner, which shall be no later than at the age of eight, until the age of 17 or graduation from high school (whichever occurs first). "Beginner" means entering the lowest grade of elementary school above kindergarten.

6:1.2 What is the "school age" of a child, and how does it differ from "compulsory age?"

The school age of a child's life is the period from the earliest admission age until 21 years of age.

6:1.3 What is the compulsory attendance law?

The compulsory attendance requirement is found in Section 1327 of the Public School Code and provides as follows: "Every child of compulsory school age having a legal residence in this Commonwealth, and every migratory child of compulsory school age, is required to attend a day school in which the subjects and activities prescribed by the standards of the State Board of Education are taught in the English language."

6:2.1 What is the admission age of beginners?

The school board has authority to establish its district's minimum entry age for beginners, which age shall not be less than five years and seven months nor more than six years and zero months as of the opening day of the school term.

6:2.2 What is the rule on "early admission" of beginners?

The school board may, upon parental request when recommended by the school psychologist and approved by the district's superintendent, admit, as a beginner, any child with a chronological age of five years and a mental age of seven years or more as of the admission date of the school system. It should be noted that this is a discretionary authority of the school board and not a requirement. (Section 1304 — see also 6:66 and PARC decree for effect on exceptional students)

6:3 Are all children who attend public schools required to go to kindergarten?

No, but the board of school directors may establish and maintain kindergartens for children between four and six years of age. When established, kindergartens become an integral part of the elementary school system and must be kept open at least 2½ hours per day, 180 days per year minimum. (Section 503)

6:4.1 May a school board refuse admission to a public school of any child of school age (Age 6-21)?

No. Every child of school age residing within a school district is entitled to attend the district's public schools established by the school board.

6:4.2 May a pupil from the ages of 6-17 years attend a school other than a public school?

Yes. It is traditional in Pennsylvania that freedom to choose a nonpublic education, meeting reasonable state standards, is a fundamental parental liberty and a basic right. (Section 4002)

6:5 Is home instruction of a pupil ever permitted?

Yes, and the legal basis for the provision of homebound instruction is found in the Public School Code as follows:

1. Reporting and examination of all exceptional children is required. (Section 1371)
2. Plans for the education of exceptional children shall include provisions for the teaching of children in their homes when they are unable to attend school. (Section 1372.3)
3. Reimbursement shall be paid for all programs for exceptional children operated in conformity with regulations.
4. Section 1372 (3) which provides homebound instruction for children confined to detention homes — even though such children are not mentally and physically handicapped — providing their period of confinement exceeds, or is expected to exceed, 10 days. (See also 6:66 and 6:68.)

6:6 What is the minimum number of school days in a school year?

Section 1501 of the School Code specifies that schools must be kept open for at least 180 days of instruction for pupils per year, except that Act 80 (1969) permits fewer than 180 days if 900 elementary hours or 990 secondary hours are provided.

6:7 What can be done about children who are absent from school because of lack of suitable clothing, food, etc?

This condition should be reported by a school director or school official to a district or county relief agency for assistance, while Section 1335 of the School Code authorizes and empowers school directors to furnish food and milk to undernourished or poor children at district expense.

6:8 May a pupil be absent from school to observe a religious holiday?

Yes. The State Board of Education, in its Chapter XI, Section 11:21, adopted May 12, 1973, has agreed that a pupil may be excused from school for "other urgent reasons," which shall include observance of *bona fide* religious holidays by particular religious groups. The Department of Education recommends that such excusal be granted only upon written request from the parents of the pupils involved and that such absence shall be classified as "excused" absence and no pupil who is excused from school because of major religious holidays shall be deprived of an award, or eligibility, or opportunity to compete for any award. If a pupil misses a test to observe a major religious holiday with his family, he must be given the right to take an alternate test or examination.

6:9 What is the present status of "released time religious education classes" in Pennsylvania?

Section 1546 of the Public School Code permits any board of school directors to enter into arrangement with a religious group for part-time weekly religious education of school pupils. Pupils may be released from school sessions for the purpose of religious education, but such release shall be for not more than one hour per week. No part of the cost and expense of religious instruction shall be paid out of public school funds.

6:10.1 What attendance regulations govern pupils under or over the compulsory age if they attend school?

Once a child enters school above kindergarten and until age 17, he or she falls under compulsory attendance regulations. If a child is entered below compulsory age or remains in school after age 17, he or she shall abide fully with all reasonable rules and regulations of the school board pursuant to its authority under Section 510 of the School Code.

6:10.2 May a pupil be excused for a tour or trip during a school term?

The State Board of Education, in its regulation Chapter XI, Section 11:26, provides that upon receipt of a written request from the parents of a pupil involved in an educational tour or trip, the pupil may be excused from school attendance to participate in an educational tour provided during the school term at the expense of the parents when such tour or trip is evaluated by the district's superintendent as educational, and that the pupil will be under the direction and supervision of an adult acceptable to both the superintendent and the pupil's parents.

6:11.1 For what reasons may a pupil be suspended from school?

Under the provisions of Section 1318 of the School Code, every principal or teacher in charge of a public school may temporarily suspend any pupil for up to three days on account of disobedience or misconduct, and any principal or teacher suspending any pupil shall promptly notify the district superintendent or secretary of the board of directors. The board, after a proper hearing, may suspend such child for such time as it may determine or may, after proper hearing, permanently expel him. (See also 4:12 and 6:34)

6:11.2 What happens if the expelled pupil is of compulsory age?

Section 1338 of the School Code outlines the procedures as follows: "In case any child of compulsory school age cannot be kept in school in compliance with the provisions of this act, on account of incorrigibility, truancy, insubordination, or other bad conduct, or if the presence of any child attending school is detrimental to the welfare of such school, on account of incorrigibility, truancy, insubordination, or other bad conduct, the board of school directors may, by its superintendent, secretary, or attendance officer, proceed against said child before the juvenile court, or otherwise, as is now or may hereafter be provided by law for incorrigible, truant, insubordinate, or delinquent children." (See also 6:34)

6:12.1 What authority does a teacher have over a pupil?

Section 1317 of the School Code states that every teacher, vice principal and principal in the public schools has the right to exercise the same authority as to conduct and behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them. This is known as *in loco parentis.*

6:12.2 What are the legal procedures in a pupil suspension in excess of three days?

The Department of Education in its School Administrator's Handbook, Section 113-341, gives the following advice and directions relative to expelling a pupil from school. Coupled with Section 1318 of the School Code, the instructions are as follows: "After a proper hearing, the board of school directors may suspend the child for such time as it may determine or may expel him or her permanently. If the child of compulsory school age is expelled permanently from the public schools and the parents fail to send their child to a licensed or approved private school, the school board may then proceed against the parents under the provisions of Section 1333 of the Public School Code. If the parents continue to violate the provisions of the compulsory school law by neglecting to send the child to a *bona fide* private school or tutorial school, the school board may proceed against the child before the juvenile court as provided in Section 1338 of the Public School Code

6:13 Is truancy a violation of law?

Yes. It is a violation of the compulsory attendance law.

6:14 What happens when a parent fails to keep his children in school?

The parent is guilty of violation of the compulsory attendance requirements, and Section 1333 of the School Code directs that every parent, guardian, or person in parental relation, having control or charge of any child or children of compulsory school age, who shall fail to comply with the requirements of compulsory attendance, shall on summary conviction thereof, be sentenced to pay a fine, for the benefit of the school district in which such offending person resides. Before any proceedings are instituted against any parent, guardian, or person in parental relation, for failure to comply, the district superintendent, attendance officer, or secretary of the board of school directors, must give the offending person three days' written notice of such violations.

6:15 What is the law on attendance of pupils with contagious disease?

Section 1417 of the Public School Code governs here. It provides that any pupil prevented from attending school on account of the health or sanitation laws of this commonwealth, or by the sanitary regulations of the local board of health, or the board of school directors, is relieved from complying with the provisions of compulsory attendance during the time he is prevented from attending school.

6:16.1 What are the requirements on the keeping of "attendance registers?"

Every principal or teacher in every public school, and every principal, teacher or tutor in every school other than a public school and in every institution for children and every private teacher in every school district, shall immediately after their admission to such school or institution, or at the beginning of such private tutoring, furnish to the district superintendents, attendance officers, home and school visitors or secretaries of the board of school directors of the districts wherein the parents or guardians of such children reside, lists of names and residences of all children between six and 18 years of age enrolled in such school or institution, or taught by such private teachers; and shall further report at once to such district superintendents, or secretary of the board of school directors, the name and date of withdrawal of any such pupil withdrawing from any such school or institution, or from private instruction, if such withdrawal occurs during the period of compulsory attendance in said district. Every principal or teacher in a school other than a public school, and every private teacher, shall also report at once to the superintendent, attendance officer, home and school visitor, or secretary of the board of school directors of the district, any such child who has been absent three days, or their equivalent, during the term of compulsory attendance, without lawful excuse. (Section 1332)

6:16.2 Why is it so important to keep an exact attendance record?

The membership of the pupils in a school system is the basis upon which the school district's aid ratio is computed and, this — is the basic determining factor in state reimbursement to the school district.

6:17 May a pupil legally be kept after school by a teacher or principal?

The code is not specific on this point. However, the School Code, in sections 407 and 510, grants authority to the school board to adopt reasonable rules and regulations for the conduct and discipline of the pupils while under the supervision of the school.

6:18 Who issues employment certificates in Pennsylvania?

Employment certificates are issued by the district superintendent for all children residing within his respective public school district. Provided, that any district superintendent, authorized to issue such certificates, may authorize and deputize, in writing, any other school official to act in his stead for the purpose of issuing such certificates.

6:19.1 May minors 14 or 15 years of age be issued employment certificates?

Employment certificates fall into two classes — general employment certificates and vacation employment certificates. General employment certificates entitle a minor, 16-18 years of age, to work during the entire year. Vacation employment certificates entitle a minor, 12-14 years of age, to work as a caddy; and a minor, 14-18 years of age, to work on any day, except on such days as the minor is required to attend school. (Section 3412)

6:19.2 Is any proof of age or prospective employment required before a work permit may be issued?

The official authorized to issue a general or vacation employment certificate will not issue a certificate until he has received, examined, approved, and filed the following papers:

1. A statement signed by the prospective employer, or by someone duly authorized on his behalf, stating that he expects to give the minor employment, setting forth the character of the same, and the number of hours per day and per week which the minor will be employed.
2. A certificate of physical fitness.
3. Proof of age. (Section 3413)

6:20.1 Is an employer responsible to see that minors have employment certificates?

Yes. Before any minor under 18 years of age can be employed, permitted or suffered to work in, about, or in connection with, any establishment, or in any occupation, the person employing the minor must procure and keep on file, and accessible to any attendance officer, deputy factory inspector, or other authorized inspector or officer charged with the enforcement of this act, an employment certificate issued for the minor. (Section 3409)

6:20.2 How does a regular employment certificate differ from a vacation employment certificate?

General employment certificates entitle a minor, 16-18 years of age, to work during the entire year. Vacation employment certificates entitle minors 14-18 years of age to work, on any day, except days as the minor is required to attend school. (Section 3412)

6:21.1 What happens to a work certificate when the minor leaves the job?

On termination of the employment of a minor under 18 years of age, the employment certificate issued for that minor shall be returned by mail, by the employer, to the official issuing the same. The official to whom the certificate is so returned files the certificate and preserves it.

6:21.2 If a minor quits one job, can he get another employment certificate for another job?

Yes. Any minor whose employment certificate has been returned is entitled to a new employment certificate upon presentation of a statement from a prospective employer, accompanied by a certificate of physical fitness, based upon a re-examination, and certifying that the minor is physically able to undertake the work for which the new employment certificate is to be issued. (Section 3416)

6:22 What penalties are provided for illegal employment of minors?

Whenever any minor is employed or permitted to work in any establishment or at any occupation, who is under the legal age for such work, or whenever any minor is employed or permitted to work in, or in connection with, any establishment, who is under 18 years of age, and for whom the person employing or permitting such a minor to work shall not have on file an employment certificate, the investigating officer may demand from the person employing or permitting the minor to work that he furnish to such officer, within 10 days, evidence of age, that the minor is in fact of legal age for the work in which he is engaged. Failure to produce such evidence shall be *prima facie* evidence of the illegal employment of such minor, in any prosecution brought. (Section 3421)

6:23 May school pupils direct traffic at school crossings?

Under Section 510 of the School Code, a board of school directors is empowered to organize school safety patrols and, with the permission of the parents, to appoint pupils as members thereof, for the purpose of influencing and encouraging other pupils to refrain from crossing public highways at points other than at regular crossings. No one may authorize or permit the use of any safety patrol member for the purpose of directing traffic (vehicular) nor shall any safety patrol member be stationed in that portion of the highway intended for the use of vehicular traffic.

6:24.1 Is it necessary that the health services of a public school, including the school nurse, dental hygienist, school physician, etc. be made available to school pupils of the school district who attend parochial schools or other nonpublic schools in that district?

Yes. Section 1401 of the School Code makes health services available to all school children of a school district whether they attend public or nonpublic schools. This service is to be provided by the public school of the school district.

6:24.2 What health tests or examinations are administered to school children?

Section 1402 of the School Code directs that every child of school age shall be given a vision test, a hearing test, a measurement of height and weight, a tuberculosis test and such other medical tests as the State Advisory Health Board deems advisable. Therefore, the school physicians of each school district shall make a medical examination and a comprehensive appraisal of the health of every child of school age (1) upon original entry, (2) while in the sixth grade, (3) in the eleventh grade and (4) prior to issuance of a farm or domestic service permit. Every school physician shall be assisted by a school nurse and parents may be present during the examination of they so request. (Section 1405)

6:24.3 When are dental examinations given?

All children of school age in the commonwealth, upon original entry into school, while in the third grade, and while in the seventh grade, are to be given a dental examination by a school dentist: Provided, however, that this requirement shall not apply to those school districts which have instituted a program of dental hygiene services. (Section 1403)

6:25 What are minimum hours of the school day for Pennsylvania public schools?

Section 1504 of the Public School Code states that unless otherwise determined by the board, the daily session of school shall open at 9:00 a.m. and close at 4:00 p.m. with an intermission of one hour at noon, 15 minutes in the forenoon and 15 in the afternoon.

6:26 Is there ever an exception to this rule?

Yes. Upon request of the board of school directors, the secretary of education may approve a school week containing a minimum of 27½ hours as being equivalent to five school days or 990 hours as the equivalent of 180 school days. (See also 11:13.2)

6:27 What is the law on double or split session?

Section 1504 of the School Code provides that, if a school district, due to crowded conditions, is unable to provide for the full-time attendance of all pupils during the school day, the board of directors, with the approval of the Department of Education first obtained, may provide for two half-day sessions, each session to be four hours in duration. This program may continue for a period of one year and extension must be granted by the department after a review of the circumstances.

6:28 May nonpublic school pupils be enrolled part time in a public school?

Yes. This is called "shared time" or "dual enrollment" and was made possible by an opinion of the Department of Justice, which opinion also set the condition for such shared time enrollment. The State Board of Education, in its regulation Section 11.33 adopted May 10, 1973, instructed school districts to record the nonpublic pupils and to count them on equivalent full-time basis or proportionate WADM for reimbursement purposes. (See also Section 502)

6:29 Are students entering school for the first time required to be immunized?

Yes. In accordance with Section 1303 of the School Code every child prior to admission to school for the first time must have been immunized, as the secretary of health has directed, against a list to be made from time to time and reviewed by the Advisory Health Board. Act 58 (1972) repealed the requirement for vaccination against small pox.

6:30 May the public school establish health clinic services?

Yes. The School Code, in Section 1414, permits any school district to provide for the care and treatment of defective eyes, ears, and teeth of all children of school age within the district and Section 3528 permits diagnosis and treatment of veneral disease.

6:31.1 May a school nurse dispense internal medications, such as aspirins, to school children?

No. The nurse should not diagnose and should never administer any medications except as prescribed by a physician.

6:31.2 Are school nurses required to report abused or maltreated school children?

Yes. This is an important procedure as outlined in the School Code. Section 1402 directs that all teachers should report to the school nurse or school physician any unusual behavior, changes in physical appearance, changes in attendance habits, and changes in scholastic achievement which may indicate impairment of a child's health. The nurse then refers the matter to the parent or guardian and, if the parent or guardian fails to pursue the matter, the nurse or school physician shall arrange a special medical examination.

6:32 Is there a law requiring a school district to employe a school nurse?

Yes. The mandate found in Section 1410 of the Public School Code directs all school districts, alone or jointly with other districts, to employ one or more school nurses.

6:33 May regular school credits be given for religious classes?

Yes. Credit is given for religious literature courses, such as the approved course "The Religious Literature of the West."

6:34 What is the law regarding the school pupil who is an "underachiever?"

No specific law. However, a pupil classified in this way could be referred to the school psychologist for recommendations and he could be possibly placed in a remedial program but only after consultation with the pupil's parents. Federal law, P.L. 94-142, requires in Section 615 that parents of students being assigned, or reassigned, to special programs of education be informed as to the basis for such assignment prior to the assignment. It further requires that a due process hearing to be provided if such assignment is contested.

6:35 May a school district legally establish a nursery school?

Yes. Section 502 of the School Code states that the board of school directors may establish, equip, furnish, and maintain such other schools or educational departments as the directors, in their wisdom, may see proper to establish, and a nursery or pre-kindergarten qualifies.

6:36 Is there any state law or state board regulation concerning class size?

No. Nor is there any reference to pupil-teacher ratio. (Special education classes may conform to state board regulations on size.)

6:37 May collections of money be solicited from school children in the school?

In general, no.

6:38 Do the police authorities have the power to interview children in the school building or use the school facilities in this connection?

Present guidelines, issued by the secretary of education, for cooperation between police and school, call for the immediate notification of the parent or guardian of the student with whom the police officer has requested a conference explaining the situation to the parents and asking if they would like to be present at the interview or if they will permit the interview to take place.

6:39 May school pupils receive medical and dental care financed by the school district?

Yes. The School Code provides for the examination, care and treatment of defective eyes, ears, and teeth of all children of school age within the district. (Sections 1410 and 1414)

6:40 May pupils be excused from certain parts of the health and hygiene course given in school if it conflicts with the religion of their parents?

The State Board of Education, in Section 11.3 of its Chapter XI, Attendance Regulations, approved May 12, 1973, states as follows: "A school district may excuse pupils from instruction in those portions of science and health courses which conflict with the religious beliefs of the pupil." To effect this excusal, the school officials shall require written requests from the pupil's parents.

6:41 Is there a prescribed method of determining a proper tuition charge for the instruction of nonresident academic pupils?

Yes. This is spelled out in the Public School Code in Section 2501.

6:42 Does a school district have the right to refuse to receive nonresident academic pupils?

Yes. The Public School Code states that the school may refuse to accept a nonresident child placed in the home of a resident by court order if the school board states in writing that the child cannot be accommodated and the reasons therefore, and the board of school directors may refuse or may permit any nonresident pupil to attend the public schools in its district. (Sections 1305, 1316) (See also the affect of the PARC decision, 6:66.)

6:43 Are high school fraternities or sororities subject to jurisdiction of school authorities?

Yes. Section 511 of the Public School Code states that the board of school directors shall prescribe, adopt and enforce such reasonable rules and regulations regarding the organization, management, supervision, control, financing, or prohibition of organizations, clubs, societies, and groups of the members of any class.

6:44 May school pupils be segregated by color in certain school buildings of a school district?

No. This is prohibited under the Pennsylvania Fair Educational Opportunities Act.

6:45 May school pupils be required to pay for damage to school property?

Yes. Section 777 of the School Code says "any" persons shall be guilty of a misdemeanor and upon conviction pay a fine of not less than $5 and not more than $200 for damage done to any public building.

6:46 Does the teacher have a right to confiscate from pupils dangerous and illegal weapons such as knives, guns, etc., brought to school?

Yes. Under Section 1317 of the Public School Code, every teacher in the public schools shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them. This is especially appropos if the possession can be deemed as disruptive to the demeanor of the classroom.

6:47 May pupils be charged "fees" in public schools of the state, such as library fees, yearbook fees, locker fees, etc.?

No, unless such fees are considered as returnable deposits.

6:48.1 Do school authorities have the legal right to assign children to so-called "special classes" without receiving the consent of the parents?

On May 5, 1972, the United States Federal District Court of Eastern Pennsylvania issued a consent decree, now revised, that requires a hearing with parents. The decree states, in substance, that no child, aged five years, six months, through 21 years, who is mentally retarded, or is thought to be mentally retarded, shall be subjected to a change in educational status without the parent first being accorded proper notice and the opportunity of a hearing. This provision also applies to any child who has never had an educational assignment or who is considered exceptional.

6:48.2 May a high school principal or guidance counselor prevent a pupil from taking a certain high school course because, in their judgment, the course could not be passed?

No.

6:49 How many days may a school set aside for graduation practice and preparations?

Pupils in graduating classes may be counted present for not more than three days for graduation preparations under the supervision of certificated school employes.

6:50 May students who apply for admission to colleges in Pennsylvania be rejected on the basis of race, color or creed?

No. The Pennsylvania Fair Educational Opportunities Act directs that it is an unfair educational practice for an educational institution to exclude or limit, or otherwise discriminate, because of race, religion, color, ancestry or national origin, against any student or students seeking admission to such institutions.

6:51.1 What share of the tuition to a community college is charged to the student?

Normally, the community college tuition is divided three ways: one-third to the student, one-third to the sponsoring school district, and one-third to the state.

6:51.2 Is a county or school district required to pay a certain amount of the tuition for each of its residents attending a "community college" sponsored by an adjoining county or by a group of school districts of which the resident district is not a member?

No. A student who is a nonresident of the sponsoring county or of the sponsoring school district shall be required to pay the tuition normally charged to the sponsoring district in addition to his own share of the tuition. (Section 2889.8)

6:52 What determines the legal school district residence of a pupil of school age?

Section 1302 of the School Code specifies that a child shall be considered a resident of the school district in which his parents or guardian of his person resides.

6:53 Is a school district required to pay the tuition charge of a high school pupil who elects to go to a vocational-technical school if the residence school does not have vocational courses?

Yes. We find, in Section 1847 of the School Code, that by obtaining the consent of the area vocational-technical school board operating an area vocational-technical school, and with or without the consent of the board of school directors of the district in which the pupil resides, any pupil residing in a nonparticipating district may attend the area vocational-technical school. The school district in which the pupil resides shall be charged for each pupil attending the area vocational-technical school.

6:54 Does the school principal have the right to prescribe the manner and mode of dress of pupils while attending school?

Section 510 of the School Code authorizes the board of school directors to adopt and enforce such reasonable rules and regulations as it may deem necessary and proper regarding the management of its school affairs and the conduct and deportment of all pupils attending the public schools in the district. Recent dress and hair codes have run afoul of court decisions in which the court has ruled against such limitation unless it can be clearly shown that the dress or hair style definitely interfere with the proper processes of education and the demeanor of the classroom.

6:55 Parents whose children have attended nursery school sometimes wish to have their children placed in the first grade rather than in the kindergarten. May this be done?

A school district may admit a child under six years of age to grade one provided that child has a mental age of seven years or more as determined by an approved school psychologist. Attendance in nursery and/or kindergarten classes is not the determinant. The admission of beginners to the first grade shall be limited to those who have obtained the age of five years and seven months, except for the foregoing. (Section 1304)

6:56.1 May parents inspect their child's school records?

Yes. Student records are now controlled by State Board of Education regulations and by federal law and federal regulations issued by the Department of Health, Education and Welfare. (See *School Law Information Exchange*, Vol. XII, No. 12, February 5, 1975.)

6:56.2 Are a public school pupil's records public records?

Although a parent or student may have access to the student's records, the Department of Justice, in April 1973, ruled that the availability of the student's records shall be restricted when such records would operate to the prejudice and impairment of the student's reputation and security. Hence, student records are not available to persons other than to the pupil and his parents.

6:56.3 May school officials disclose information given to them, in confidence, by students?

Section 1319 of the code protects information received from a student in confidence from disclosure by certain school officials, except in matters of child abuse. The Federal Education Rights and Privacy Act of 1974 (20 USCA §1232 G) also imposes strict rules on disclosure of certain pupil records as a condition of receiving federal aid.

6:57 May a school pupil be forced to give the pledge of allegiance and salute the American flag in the public classroom?

No. This question was decided by the Supreme Court of the United States in 1943 in the case of *West Virginia State Board of Education vs. Barnette.*

6:58 May a public school require that all pupils take part in the recitation of a daily morning prayer?

No. This requirement was declared unconstitutional by the Supreme Court of the United States in 1963 in the case *School District of Abington Township, Pa. vs. Schempp.* However, Act 305, signed December 12, 1972, and known as the "Silent Prayer Act," grants discretionary authority to a school board to set aside a period at the opening of school for silent prayer or meditation with the participation of all pupils assembled.

6:59 Is there a law requiring pupils to take showers in physical education classes?

Not specifically. However, the School Code requires that physical education be taught and taking a shower is considered to be part of the instruction and requirement of the physical education course. (Section 1511)

6:60 What is the law regarding de facto segregation of school pupils?

The Supreme Court of Pennsylvania, in 1967, in the case of *Pennsylvania Human Relations Commission vs. Chester School District,* ruled that the Human Relations Commission could, upon proper findings, order a school district to halt certain discriminatory practices and to file plans for eliminating de facto segregation in some schools. The court held that, for the commission to invoke its authority, it was not necessary to find that the school district had intentionally fostered and maintained segregation but only necessary to find that there was, in fact, a racial imbalance.

6:61 What is the Pennsylvania state law regarding discrimination among students on account of race, creed, or color?

The Pennsylvania Fair Educational Opportunities Act states that it is an unfair educational practice for an educational institution to exclude or limit, or otherwise discriminate, because of race, religion, color, ancestry or national origin, against any student or students.

6:62 What are the pertinent "drug abuse" laws of Pennsylvania of concern to public school officials?

The Drug Device and Cosmetics Act of 1961. This act defines narcotics and dangerous drugs and establishes penalties for their use and possession.

6:63 Can public school students protest or demonstrate peacefully during school hours?

The Supreme Court of the United States in 1969, in the case of *Tinker vs. Des Moines Independent Community School District*, decreed that school pupils have the right of protest if it is done peacefully and does not disrupt the work or discipline of the school.

6:64 Is a student locker search legal?

Probably. Depending upon the circumstances and, in the absence of any specific board policy, the school administrator would have to use his own judgment as to the advisability of search of a locker without the consent of the student. Court cases have held that such search may be undertaken under proper circumstances.

6:65 Can public school authorities use the remedy of injunction in dealing with violence or serious disruption in the schools?

Yes. In Section 211 of the Public School Code, school boards are vested with all necessary powers to enable them to carry out the provisions of the Public School Code, and the School Code charges the school board to establish, maintain and operate the schools. The injunction procedure has been invoked quite frequently in recent years.

PHYSICALLY AND MENTALLY HANDICAPPED

6:66 May children of compulsory school age be exempt from school attendance because of physical disability or mental or emotional disorders?

The federal court consent decree entered into by state officials and PARC (Pennsylvania Association for Retarded Citizens), as amended, generally provides for comparable treatment for handicapped and exceptional pupils as for ordinary pupils. In this consent decree certain agreements were reached as to how various sections of the School Code shall be applied regarding exceptional children. One of those stipulations requires that Section 1327 of the School Code dealing with compulsory attendance shall apply equally to handicapped or exceptional children. Thus, the excuses set forth in Section 1329 of the School Code apply equally to regular and exceptional students.

6:67.1 What general provisions for education are provided for children of school age who are physically handicapped and unable to attend school?

The PARC consent decree and the changes made in federal law, P.L. 93-380 (1974) and P.L. 94-142 (1975), have greatly changed the provisions for education of handicapped and exceptional children. Act 144 (1975) made further changes, adding to this category "socially or emotionally disturbed" children.

These changes are so numerous as to preclude precise enumeration here. However, in general, exceptional pupils must be given a program that provides opportunity equal to the opportunity provided for regular students in the school age range from 6-21. In the event that programs for regular students are provided for pupils under the age of six, similar provisions must be made for exceptional children below the age of six.

6:67.2 What provisions are made for reporting physically and mentally handicapped children?

Section 1371.2 of the School Code directs that it is the duty of the district superintendent in accordance with rules of procedure prescribed by the secretary of education to secure information and report the name of every exceptional child within his school district to the proper intermediate unit on or before the 15th day of October of each year and thereafter as cases arise. This is further affected by Act 144 (1975).

6:68 What specific services are provided for handicapped school children?

Special classes or schools may be established within the district, or jointly with another district or districts, or may be operated by the intermediate unit. Homebound instruction as provided in Section 1372 of the School Code must be made available to mentally retarded children on the same basis as physically handicapped children (PARC consent decree). P.L. 93-380 and P.L. 94-142 call for "a free appropriate public education" for all handicapped children. (See also 6:67)

6:69 Is it mandatory to provide special education for eligible children with a low IQ value?

Yes. Again, the changes brought about by the PARC decision, new federal law, and Act 144 (1975) require a program appropriate for a given child.

6:70 What specific services are provided for blind and deaf children?

The School Code states that readers, helpers, guides, aides, appliances, special school books, and supplies and devices can be provided for any child who is blind, partially sighted, deaf, hard of hearing, or afflicted with cerebral palsy. Free transportation or board and lodging may be furnished by the school district to any exceptional child who is regularly enrolled in a special class that is approved by the Department of Education. Any child under six years of age who is totally deaf or whose hearing is impaired, who is not receiving adequate care and treatment, and whose parent or guardian is financially unable to provide such treatment shall be provided such treatment at the expense of the school district. The Department of Education is authorized to educate blind children under the age of eight and beyond the age of eight when for physical, mental or other proper reasons such a child needs special care, and the Department of Education may appropriate $500 per year for each blind student pursuing higher education. (Sections 1373.1, 1374, 1378, 1380 and 1381)

6:71 Are emotionally disturbed school children now eligible for the school's educational services?

Yes. In Section 1372.4 of the Public School Code, the intermediate unit shall have the power, and it shall be its duty, to provide, maintain, administer, supervise and operate such additional classes or schools as are necessary or to otherwise provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for. This was further extended by Act 144 (1975).

6:72 Should a district think in terms of special classes for all of its handicapped children?

No. Unless the school district has children with similar handicaps, it would not be practical. In such cases, it might be advisable for the intermediate unit to operate classes. Also, current theory suggests such children be placed in regular classrooms wherever possible.

6:73 Is there any special state aid for physically, mentally or emotionally handicapped children attending special programs in other than public schools?

Yes. The School Code provides for the education in approved schools of children who are blind, deaf, socially or emotionally disturbed, cerebral palsied, brain-damaged, and muscular dystrophied. Also, the School Code provides for reimbursement for readers, helpers, guides, aides, appliances, special books, supplies, and devices for any child who is blind, partially sighted, deaf, hard of hearing or afflicted with cerebral palsy. (Section 1376, 1377 and 1373.1) (See also 6:66)

6:74 Is there any state aid for certain handicapped children attending private facilities?

Yes. The School Code provides for state aid to private facilities where a student has enrolled with the approval of the Department of Education. Act 273, signed November 15, 1972, amended Section 1373 of the School Code to clarify and increase the reimbursement payable for such attendance. This was further expanded by Act 144 (1975) and its changes to sections 1376 and 1377 of the School Code.

6:75 Are there other statutory requirements for school districts to provide special services for pre-school children with a hearing impairment?

Yes. Any child under six years of age who is totally deaf or whose hearing is impaired, who is not receiving adequate care and treatment, and whose parent or guardian is financially unable to provide such treatment shall be provided such treatment at the expense of the school district. (Section 1378)

6:76 Is public school education available to deaf and blind children?

The Public School Code provides for the child to be sent to a special school or for the parent or guardian to provide for the tuition to educate such child by legally certified private tutor. (Section 1327 and 1238) Act 144 increased payments for such students to $8,500. P.L. 94-142 requires that a state have a policy that "assures all handicapped children the right to a free appropriate public education" as a condition for federal aid.

SCHOOL LAW

Chapter VII

The intermediate unit and the area vocational-technical school

7:1 How did the intermediate unit come into being?

Act 192, signed by the governor on January 14, 1970, dissolved the office of the county superintendent of schools and Act 102, approved by the governor on May 4, 1970, established a network of 29 intermediate units. This act likewise established an intermediate unit board of directors and provided a definition of their duties and functions.

7:2 How were the boundaries of the intermediate units determined?

The boundaries of the intermediate units were determined by the General Assembly by applying the following considerations:

1. The number of public school children enrolled in kindergarten through grade 12.
2. Ease of travel within the unit.
3. The opportunity to provide adequate basic services.

7:2.1 Were all school districts of the commonwealth assigned to an intermediate unit?

Yes. The General Assembly mandated that each school district of the commonwealth be assigned to an intermediate unit and be entitled to the services furnished by the IU board. Both Philadelphia and Pittsburgh were designated as separate individual intermediate units.

7:3 What is an intermediate unit?

The intermediate unit is defined as the middle echelon of a three-echelon state education system (school district, IU, and State Education Department) which provides consultative, advisory, or education program services to school districts. The function of the IU is to provide ancillary services necessary to improve the state system of education. Intermediate unit programs are to be developed according to the needs of the school districts served by the units.

7:4 When did the IUs become operative in Pennsylvania?

July 1, 1971.

7:5 How many members compose an IU board of directors?

Thirteen members.

7:6 What is the term of office for an IU board member?

Except for the initial term, the term of office for all intermediate unit board members is three years.

7:7.1 How are members of the intermediate unit board elected?

Intermediate unit board directors are selected during the annual convention of school directors in April. Nominations can be made by any school director from the district. Each school director of each school district is permitted to cast a proportionate vote for the candidate of his choice. The director's vote is weighted according to student population of the district represented. No school district is permitted to have more than one member on the IU board until all districts within the IU have representation.

7:7.2 May a person, not a member of a component district school board, serve on the intermediate unit board of directors?

No. The sole qualification of an intermediate unit board member is to be a member of the school board of one of the component school districts of the intermediate unit.

7:8.1 How do vacancies occur on an intermediate unit board of directors?

Vacancies occur upon death, resignation, removal from office, or when the person ceases to hold office as a school director in one of the component school districts of the intermediate unit.

7:8.2 When vacancies occur on an IU board of directors, how is the vacancy filled?

Vacancies are filled by majority vote of the remaining members of the IU board of directors. Such appointees serve until the next following annual convention at which time a member shall be elected for the unexpired term. However, no district may have more than one member on the IU board until all other districts have representatives.

7:9 Is it possible for IU board members to succeed themselves?

Yes. Members may succeed themselves for two additional three-year terms.

7:10 How may IU board members be removed from the IU board?

Intermediate Unit board members may be removed in the same manner and for the same causes as prescribed in law for members of a school district board of directors.

7:11.1 Are the officers of an intermediate unit board required to be members of the IU board?

The president and vice president are required to be members of the IU board of directors; the secretary and treasurer may be nonmembers.

7:11.2 Are district school board members eligible for expenses for attending IU conventions?

Yes. Act 312, signed December 6, 1972, authorizes reimbursement to school directors from district funds for attending the annual and special IU conventions.

7:12 How is the state aid allocated to intermediate unit boards?

At the outset, the state guaranteed that no IU would be allocated less state financial support than the amount received during the 1968-69 school year by the component counties. This included monies from state and county sources. The allocation for each unit is based on these factors:

1. The total weighted average daily membership of the unit.
2. An "aid ratio" computed in the same manner and on the same formula as for school districts.
3. A "weight factor" found by multiplying the unit's WADM times its aid ratio.
4. A "statewide value per weight factor" determined by dividing the amount provided for IU operation in the governor's budget by the total weight factor of the state.
5. Determine the IU's allocation by multiplying its weight factor times the statewide value per weight factor.

7:13 What are the powers and duties of the intermediate unit board?

Section 914 A of Act 102, the Intermediate Unit Act, passed in 1970, lists the following as specific functions of the intermediate unit board of directors:

1. To appoint executive and assistant executive directors and determine their salaries.
2. To approve professional staff appointments made by the executive director.
3. To adopt employment policies for nonprofessional staff.
4. To adopt a program of services and adopt and advertise the budget.
5. To provide and conduct a program of services authorized by the State Board of Education.
6. To contract for specialized services.
7. To receive federal, state, school district and other funds and expand this money to conduct its program of services.
8. To select a depository; employ a solicitor; and choose a name for the IU.

9. To consolidate and let bids for bulk purchases.
10. To perform other duties as may be required by regulations of State Board of Education.

7:14 How does a component school district secure educational services from the intermediate unit?

The Intermediate Unit Act declares that all component school districts of an intermediate unit are entitled to all services available from the intermediate units. If a majority of the component school districts desire an additional service, this service shall be provided. The component school district would normally make a request for existing intermediate unit services through the respective specialists employed by the intermediate unit. However, if a single school district desires a special service it may contract with the IU for that service. (Section 914-A, 916-A)

7:15 How do the component districts share the costs of these services?

When an IU-approved budget exceeds the state's allocation for that unit, each component school district of the unit is obliged to contribute to the IU a share of the amount the IU budget exceeds the allocation. Each school district's share is computed as follows:

1. Determine the weight factor for each school district by multiplying the school district's WADM by the difference between 1.0000 and the school district's aid ratio.
2. Determine a weight factor for the IU by dividing the amount the budget exceeds the allocation by the sum total weight factors of the component school districts.
3. Determine each school district's share of the average by multiplying the value per weight factor by the weight factor of the school district.

7:16 What additional power do intermediate unit boards have?

Situations may arise where school districts desire to operate independently, at their own expense, to provide a service that is included in the approved program of services to be offered by an IU board. The IU board may sanction the districts providing such service and may relieve the school district of payment for the same service provided by the IU board.

7:17.1 Do the teachers employed by intermediate unit boards enjoy tenure?

Yes. All professional and temporary professional employes of an IU have the same rights of tenure as professional and temporary professional employes of school districts.

7:17.2 Are IU teachers entitled to sick leave, military and sabbatical leaves?

Yes. The professional and temporary professional employes of an IU have the same leave privileges, salary and tenure rights as are applicable to school districts in general.

7:18 What education services are available to component school districts?

Section 914A of the Intermediate Unit Act, Act 102, passed in 1970, lists the following as basic service program areas:

1. Curriculum development and instructional improvement services
2. Educational planning services
3. Instructional materials services
4. Continuing professional education services
5. Pupil personnel services
6. State and federal agency liaison services
7. Management services

The IU may also provide and conduct programs of services authorized by the State Board of Education, and/or services performed under contract with component school districts. The IU may also provide services for exceptional children, educational broadcasting, audiovisual libraries, area vocational-technical schools, and cooperative purchasing.

7:19 Does the IU have power to hold title to real estate?

No. The IU is a creation of the Legislature and, as such, has only those powers which the Legislature expressly granted to it. Act 102 of 1970 enumerated the powers and the power to hold title to real estate was not included. Hence, it is clear that the IU may not hold title to real estate, nor does it have power to purchase a building or purchase land and construct a building thereon. (See also 7:28)

7:20 May intermediate unit boards operate special classes for the physically handicapped and mentally retarded?

Both the School Code and specifically the Intermediate Unit Act grant the intermediate unit the legal power and the duty to provide, maintain, administer, supervise, and operate necessary classes for exceptional children when programs are not provided by the district(s) or when such students are not otherwise accommodated.

7:21 Is the IU board of directors responsible for all special education programs for the IU?

No. School districts now being eligible for advance payment for operation of special education classes may, and are encouraged to, operate their own special education classes; the exception being when there is an insufficient number of such exceptional children within the school district to support a class.

7:22 Who has primary responsibility for the operation of special education and how does the IU get in on the operation?

All school districts must prepare a comprehensive plan for the education of exceptional children. The IU board of directors must likewise prepare such a comprehensive plan. The state special education policy stipulates that school districts shall provide programs. If a district does not respond to this responsibility, the operation of the program becomes the function of the IU board. Ultimately, the responsibility rests with the state to make certain that proper programs are provided. Generally speaking, the IU should operate programs that cannot be operated efficiently or effectively by individual districts because of limited numbers of exceptional pupils to be served in any one district. (Section 1372 — see also 6:66 and 6:68)

7:23 How and when are IU special education programs funded?

The IU board of directors submits a special education budget to the Department of Education; the commonwealth provides the IU with advanced payment funds. One-half of such approved funds are to be received in August and the remaining half of the funds are payable in January of the school year. (Section 2509.1)

7:24 Is the IU special education budget a part of its general operating budget?

No. The special education budget is completely separate and is approved by the IU board. It is not submitted for approval at the April convention, as is the IU general budget.

7:25 Is transportation of special education pupils provided?

Yes. Free transportation may be furnished by the school district for any exceptional child who is regularly enrolled in a special class that has been approved by the Department of Education or in a regular class where approved educational provisions are made. If free transportation or board and lodging is not furnished by the district, the IU shall provide the transportation necessary. (Section 1374).

7:26 Do intermediate unit boards have a responsibility to initiate research to discover the educational needs of the schools of the area?

Yes. This is one of the functions of its Curriculum Development and Instructional Improvement Section.

7:27 What is the maximum amount of time a shared service teacher or worker could spend in a single component school in order for the service to be approved as a "shared" service?

If the teacher is employed by the IU and serves a district, it is a "shared service". There is no maximum or minimum time limit for such service.

7:28 Does an intermediate unit board have the legal right to construct buildings by establishing an "authority?"

No. Municipal authorities are created under the Municipal Authorities Act of 1945 which defines a municipality as any county, city, town, township, borough or school district. Intermediate units are not included in this definition; therefore, they have no legal authority to create municipal authorities. However, since the Municipal Authorities Act of 1945 provides the power to create authorities to school districts, the component school districts of an IU could create an authority for the purpose to acquire land and construct a building thereon and lease such building to the IU for occupancy and educational use.

7:29 Is it necessary to advertise the proposed IU budget?

Yes. The IU board of directors must adopt and advertise the proposed budget at least 30 days prior to the annual convention in April.

7:30 What constitutes approval of the IU operational budget?

There are two approvals necessary — a favorable majority of the component school districts, and a majority of the proportionate votes cast by the district school directors present and voting at the April annual convention of school directors.

7:31 What is meant by "proportional votes" at an IU convention?

The election of officers and votes for budget approval at IU conventions are by proportional ballot. Each school director's proportional vote is found by dividing the WADM of a school district by the total WADM of the IU, multiplying this quotient by 1000, dividing the product so obtained by 13 and rounding off to the nearest whole number. The proportionate vote is to be computed each January and every director shall have at least one vote.

7:32 Is the IU board a taxing body?

No. The IU board of directors has no taxing authority.

7:33 When are state funds obtained to operate the IU?

After Department of Education approval is granted to the adopted intermediate unit budget, one-half of the budget request is forwarded to the IU in July and the second half of the approved IU budget is paid over in December.

7:34 Does the IU file financial reports to the state?

Yes. An IU annual financial report must be submitted to the secretary of education not later than October 1 each year, together with an auditor's report prepared by a CPA or other competent public accountant.

7:34.1 Are there additional reports required of the IU?

Act 57 (1974) requires that the secretary of education submit an annual report to the General Assembly by the first of January regarding the statewide IU operation. The Department of Education also requires special IU reports on various areas of operation.

7:35 What are the sources of money to support programs that might be offered by the IU?

The sources of funds are the state, the federal government, and the local school districts. Funds may also be received from foundations and other such sources.

7:36 How is the executive director of the IU appointed?

The executive director is elected by a majority vote of the 13 members of the IU board of directors.

7:37 What is the term of office of the executive director?

The executive director is appointed for a four-year term. However, the initial term of commission terminated June 30, 1974, and succeeding terms terminate each four years thereafter.

7:38 What are the certification requirements for the executive director?

For the intial appointment for the term ending June 30, 1974, the appointee had to possess a valid letter of eligibility or an active commission as district or county superintendent. With the exception of those elected as executive directors for the initial term, commissions will be issued to appointees who satisfy requirements approved by the State Board of Education as follows:

(1) An earned doctorate or a master's degree plus 40 hours of graduate study taken at an institution approved for the preparation of district superintendents, and

(2) Six years of experience in education work at the elementary, secondary, county office, intermediate unit, State Department of Education, or state-approved college or university level. In three of the six years, the applicant shall have served in a management or supervisory capacity.

7:39 What is an area vocational-technical school committee?

The area vocational-technical school committee is the policy and decision-making body for the operation of an area vocational-technical school. The membership of this body is determined by agreement among the boards of participating school districts with each school district having at least one member.

7:40 How is an area vocational-technical school board established?

The area vo-tech school results from a joint agreement among the component school districts which desire to establish such a school. Every school board member of every component school district is a member of the vo-tech school board. If this vo-tech board decides upon a vo-tech committee, such committee shall have at least one member from each component school board, with the membership number to be decided by joint agreement among the component boards.

7:41 Do IU boards of school directors operate all area vocational-technical schools?

No. The area vocational-technical school board, consisting of the several participating boards of school directors, has the option to delegate the operation authority to a joint operating committee or may delegate operation to the IU board of directors.

7:42 If the IU board of directors acts as the operating board for a vo-tech school, does it present a separate vo-tech budget, or is the vo-tech budget incorporated in and part of the IU general budget?

The vo-tech budget is separated entirely from the IU general budget but must have the approval of the school boards of the member school districts of the vocational-technical school, as well as of the 13 member IU board of directors.

7:43 Who serves as the chief school administrator of an area vocational-technical school?

When the IU board of directors operates the area vocational-technical school, the executive director of the IU is the designated chief school administrator. When the joint committee operates the school, either a chief school administrator from one of the participating school districts or the IU executive director may be chosen to serve as the chief school administrator. (Section 1850.1)

Chapter VIII

Assessment and collection of taxes

8:1 Who shall prepare a copy of the appropriate assessment list for school district tax collection purposes?

The tax assessment duplicate list is always prepared by the county board of assessors for the county commissioners. In some cities, however, the city clerk is empowered to do this. The listing is then sent to the school district and the appropriate taxing jurisdictions place the tax on the assessments. The school board is responsible for the distribution of the assessment duplicate for school district tax collection. (Section 677)

8:1.1 Who shall file the school tax enumeration list with the tax collector?

The president of the board of school directors together with the secretary shall execute any such listing to tax collectors. (Section 427)

8:2 Who shall be responsible for the accuracy of the school tax assessment list and per capita tax lists?

Section 680 of the Public School Code specifies that it is the duty of the proper assessor, county or city, to prepare an accurate list of persons over 18 and to return this listing, with the list of taxable properties in the school district, to the school board of each school district.

8:3 Who actually makes the property assessments for school tax purposes?

In Pennsylvania, the County Board of Assessors has the final determination; however, in some cities the city clerk or city assessor has the authority to make property assessments for tax purposes. (Section 180)

8:4 What is the remedy for a school district in which the school taxes have been erroneously assessed or collected?

The school district uses the assessor's information. If the assessment is incorrect, the error should be called to the assessor's attention at which time the assessor verifies the claim and notifies the school board. Refunding of erroneous taxes is done by the taxing authority (school district) which billed the people.

8:5 **What happens if and when school taxes are inadvertently paid to the wrong collector?**

The assumption is that the wrong collector had the tax statement in his duplicate. The wrong collector should be familiar enough with his role to question the duplicate and, in this case, the collector should not have accepted the payment. In the absence of the duplicate, right or wrong, the tax collector should not accept payment. The assessor should correct the matter when it is called to his attention. In any event, the wrong collector must make a refund to the party who paid the taxes and a written claim for the refund must be filed with the taxing authority within two years of the tax payment. (Sections 3007 and 3013)

8:6 **What should be done about the assessment of property omitted from the tax list of preceding years?**

When a tax collector, or taxing body, discovers an omission on the tax duplicate, it shall report such omission to the assessor who shall promptly certify the addition to the taxing jurisdiction which shall then certify such addition to the tax collector.

The taxing body may also by resolution direct the tax collector to add such names to the tax rolls and to collect such taxes as may be applicable for the current year and preceding two years, while at the same time notifying the assessor to add the name to the assessment rolls. (Section 3040)

8:7 **What becomes of the tax assessment list after it has been returned, after collection of taxes, by the tax collector?**

A tax duplicate is the tax collector's authority to collect certain taxes as delegated by the school board. Both the tax collector and the taxing authority have copies of this duplicate. When the tax collector's account is audited by the school district, the district issues an audit clearance. The tax collector retains his list as his own property, and the school district retains its copy.

8:7.1 **How is a tax collector relieved of responsibility for uncollected taxes?**

The tax collector is responsible for the collection of all taxes on the tax duplicate until exonerated by the school board for further responsibility. Typically, a school board will exonerate a tax collector for the past year's uncollected taxes after reconciliation of the tax duplicate with the details of the uncollected taxes. The further responsibility for collection of unpaid prior year's taxes is then typically assigned to a special tax collector designated by the school board.

8:8 **What are the fees of the collector of school taxes?**

In all classes of school districts, the board of school directors shall set the compensation or commission for the collection of school taxes, and this compensation or commission shall not exceed five percent of the total taxes collected. (Sections 3034 and 3035) Tax collectors may be paid on a salary basis. (See also Sections 107, 109, 659, 3018.6, 3033, 3036, 3046.1, 3053, 3064, and 3076.)

8:9 How is the taxpayer notified by the collector of school taxes?

The tax notice must contain the following information:

1. The date of the tax notice.
2. The rate or rates of taxation.
3. The valuation and identification of the real property of the taxpayer.
4. The occupation valuation of the taxpayer.
5. The several amounts of real property for which the taxpayer is liable for the current year.
6. The total amount of taxes for which the taxpayer is liable for the current year.
7. A statement that such taxes are due and payable.
8. A request for the payment of such taxes.
9. A statement of the place and time where the taxes are to be paid.
10. The time during which an abatement of tax will be allowed, when the full amount of the tax will be collected, and when an additional percentage will be added as a penalty.

8:10 Who actually computes the amount of school tax due from each person on the tax list?

Section 810 of the School Code states that the secretary of the school board computes and enters the amount of school tax due from each taxpayer on the duplicate and certifies a copy of this tax duplicate to his school board and to the tax collector.

8:11 May a school board "cancel" a person's property or per capita tax?

No. In established "hardship" cases, however, the school board has the authority to excuse or exempt; that is, exonerate the tax collector from collecting the tax. The tax is actually forgiven rather than cancelled. (Sections 3047 and 3060) A school board may by resolution exempt persons with incomes under $3,200 (Acts 309 and 310, 1974) from per capita, occupation, occupational privilege tax or any portion thereof. (Sections 3002, 3007)

8:12 When must the tax duplicate be turned over to the tax collector?

Such tax list must be in the hands of the collector on or before the first day of July of each year. (Sections 682 and 3051)

8:13 How early in a school year may a school board levy its school taxes?

Section 672 of the Public School Code declares that all school taxes shall be levied between February 1 and June 30 each year except where the fiscal year is the calendar year, then the levy must be made in October or November.

8:14 When must the tax collector give notice of taxes due?

Within 30 days after receiving a tax duplicate, the tax collector must notify every person whose name appears on the tax duplicate. (1945 PL 1050 Sec. 6)

8:15 Is the tax collector permitted to make any changes on the tax assessment rolls?

No. The tax collector cannot make changes independently. He must obtain permission to make any changes from the assessment office as must the school district and all other parties involved in any change. (Section 677, 677.1)

8:16 Are there any rates established in law for the tax collection services?

Sections 3034 and 3035 of the School Code set a maximum rate of five percent of the amount collected for boroughs, and townships of the first and second class. Section 3033 provides that third class cities, and their school districts, can jointly set an agreed upon rate. Fees for the collection of 511 taxes are established by the school board.

8:17 Are newspaper notices of tax collection required before the collectors starts to receive tax money?

No. However, in the event of an intention to adopt a tax ordinance or resolution, proper notice through the newspapers must be given by the taxing authority. (Section 3009 — See also Act 175, 1974)

8:18 What is "tax equalization?"

Theoretically, tax equalization means that everyone is assessed at the true market value of real estate and pays his fair share of tax. Tax equalization is achieved by determining the market value of each parcel as determined by the quotient of the assessed value divided by the latest ratio of assessed value to market value in the municipality as determined by the State Tax Equalization Board. (Section 672.1)

8:19 Must a special resolution be adopted by a board when the school tax roll is confirmed?

Yes. The county assessor certifies the school tax duplicate to the school board and further certification by the board is needed for the tax collector. (Section 3010)

8:20 What is a tax warrant?

In some states, the tax warrant is a document from the school district authorizing and directing the tax collector to collect the taxes listed in a particular duplicate. In Pennsylvania, the warrant is the certified tax duplicate, and the Local Tax Collection Act of 1945 provides that the duplicate, when issued to the tax collector, constitutes his warrant for the collection of all taxes levied and assessed on that duplicate.

8:21 What is the length of time of a tax duplicate?

The normal length of time of a tax duplicate is one year since taxes are usually levied and collected annually. However, the warrant remains in force until the complete settlement of all taxes listed on the duplicate (1945 P.L. 1050 Sec. 5) (See also 8:7.1)

8:22 What is meant by "mansion house" taxing?

"Mansion house" is a term used when a property is located in two taxing jurisdictions. Regardless of school district boundary lines, a person's property belongs within the boundary lines of the taxing district in which the "mansion house" is located. (Section 224)

8:23 How is the real or true value of the real estate of a district determined for state reimbursement purposes?

The Pennsylvania State Tax Equalization Board (STEB) determines the market value of real property in each school district based upon the aggregate of sales value of property sold within a given jurisdiction for a specified period of time. STEB also determines the ratio of assessed value to market value based upon data furnished by the county assessor's office. (Sections 2851-2867)

8:24 Is the market value, as determined by the State Tax Equalization Board, the same as the market value used for local property tax assessments?

No. The market value of real property used for local tax assessments is the market value determined by the county or city assessors. The State Tax Equalization Board market and assessed valuations are used solely by the Department of Education to compute aid ratios and school district reimbursements.

8:24.1 Does a county reassessment of property values affect the aid ratio calculations of the State Tax Equalization Board?

No. STEB values are based upon true market value and are influenced by the sales price of properties in a given jurisdiction. Reassessment does not change the true market value.

8:25 Does the state Sales Tax Law apply to school districts?

No. Each school district has a tax exemption number. However, a school district may levy on "retail sales" involving the transfer of title or possession of tangible personal property up to a rate of two percent.

8:26 Are there any tax sources for a school district other than on real estate?

Yes. The sources are almost infinite. In Act 511, the so-called "tax anything law," school districts have tax sources such as earned income, per capita, occupational privilege, occupation, admissions, real estate transfer, etc. (Sections 3001, 3005, 3007, 3011, and 3040.1)

8:27 When shall the payment of unpaid school taxes be made to the school board by the collector of delinquent taxes?

Upon collection; such as, if the collector can collect the taxes, he or she turns the taxes collected over to the school district along with all penalties and interest accrued up to the time of the collection of the tax minus an agreed upon fee established by the school board.

8:28 Does a school district receive the full sale price when property is sold for unpaid taxes?

If a piece of property is sold at a tax sale by the sheriff, the school district will receive only that portion of the sale price that satisfies the tax claim, fees and penalties.

8:29 Does the return of unpaid school taxes by the county include any fees or penalties paid to the county by the delinquent taxpayers?

The return includes all fees and penalties.

8:30 Is the school property of a school district subject to assessments by municipal governments?

No. Real estate owned by the county, city, school district or other municipality or municipal division is not subject to tax or municipal claims on property and is, by law, exempt from taxation and fees except for the removal of nuisances, for sewer claims and sewer connections, or for the curbing, recurbing, paving, repaving, or repairing the footways in front thereof. (Section 3121)

8:31 Are house trailers taxable as real estate for school tax purposes?

Yes. They are subject to any tax levied on other real property if the house trailer is permanently fixed to the ground and connected to water, gas, electricity or sewer facilities. (Sections 3001 and 3061)

8:32 May school taxes be paid in installments?

Yes. Installment payments may be made on a quarterly basis. (Sections 232 and 3039)

8:33 If a school district, in preparation for a new building, acquires land and lets it remain unused for three, four or five years without building on it, is that land still tax exempt as school property?

Yes. The land continues to fall into the tax exempt category as long as it is owned by the school district and is held for intended use for school purposes.

8:34 When is "grievance day" (when a taxpayer may raise questions on his assessment)?

There is no particular starting date for the grievance period before the county or city assessment board. The appeal period closes, however, on the first of September of each year. (Sections 3002.3, 3002.4)

8:35 Is there special "state aid" to certain school districts in connection with railroad real property and other public utilities?

Act 66, enacted in 1970, provided for imposing of taxes on public utilities at the state level only. The property taxed does not include all properties such as railroad paths and right of way of lines; other real properties, however, are included. School districts to which Act 66 applies must file for this special state aid since the tax is levied and collected by the state and not by the school district.

8:36 What is the rate of penalty for late payment of school taxes in school districts where the tax collector works on a salary basis?

Regardless of whether the tax collector is salaried or not, Act 126 (1976) allows each taxing jurisdiction to set discount rates and penalties. Discounts must be at least two percent and penalties may be as high as 10 percent.

8:37 May the tax collector accept a partial or token payment tendered for the payment of taxes on an individual parcel?

No. Taxes must be paid in a lump sum or on a quarterly basis. (Sections 107, 109, 3031, 3032, 3046.1, 3060, 3074, 3076)

8:38 What is the law which provides tax exemptions of real property of certain persons 65 or over?

The Property Tax Assistance Act of 1971. This act does not provide a tax exemption but rather provides a rebate from the state. The persons affected must pay all their taxes, and file for a rebate application with the state at the end of the year. The act establishing the Pennsylvania Lottery was passed to subsidize this act. The maximum rebate allowable is $200, and the act applies to the total school, municipal and county taxes paid.

8:39 What are the constitutional tax limits established by Pennsylvania's "tax anything law?"

The law in question is Act 511, enacted December 31, 1965, which sets the following limits on these so-called "Act 511" taxes:

1. Per capita — $10.
2. On each dollar of the whole volume of business of wholesalers of goods, one mill.
3. Earned income, one percent.
4. Retail sales involving transfer of title or possession, two percent.
5. Transfer of real property, one percent.
6. Admissions to amusement and entertainment, 10 percent.
7. Occupations taxes not using millage, 10 percent.
8. Occupational privilege, $10.
   (Section 3013)

8:40 Are 18-year-olds liable for payment of per capita taxes?

No, only those "over 18." Act 138, enacted June 16, 1972, amended Section 672 of the Public School Code to include all persons over 18 in tax duplicates.

8:41 Does an 18-year-old have to "register" with the assessor when he becomes 18?

Section 680 of the School Code requires that every resident of a school district, upon attaining 18 years of age, and every person over 18 becoming a resident, shall, within one year, notify the proper assessor of his or her becoming 18 or becoming a resident.

Chapter IX

School buildings and facilities

9:1 Must plans and specifications of school buildings be approved by the secretary of education?

Yes. Section 731 of the Public School Code requires that no public school building may be contracted for, constructed, or reconstructed, in any school district of the second, third, or fourth class, until the plans and specifications therefor have been approved by the secretary of education.

9:2 What are some of the health room regulations for public school buildings of Pennsylvania?

The School Code states that every public school building of 10 classrooms or more shall contain a room to be known as the health room, which shall be furnished and equipped for use as quarters in which regular school medical inspections may be given, and a first aid room for pupils requiring medical attention while attending classes. (Section 3128.1 through and including Section 3128.3)

9:2.1 What consideration must be given to handicapped students in school building construction?

Federal Law 93-380 sets forth certain requirements that public schools must meet to accommodate handicapped students. School buildings must be designed to meet the needs of handicapped students.

9:3 Does the approval of a school building by the secretary of education include approval of such items as swimming pools, etc.?

Yes.

9:4 May a school district enter into a contract with an architect for preparation of preliminary plans and specifications for a school building construction project before submission of the building application?

Yes. This is construed as proper action of the board of school directors, and the architect's fee is a legitimate charge against the school district.

9:5 Who determines the school building "standards" as such?

The State Board of Education is charged by law to promulgate and adopt reasonable standards to guide school building construction. The School Code further charges the state board, at least every three years, to review and update the standards. The state board has the guidance and assistance of a committee appointed by the governor in this periodic review and updating. (Sections 733, 734, and 735)

9:6.1 Is it necessary to advertise for bids for school construction jobs?

All construction, reconstruction, repairs or work of any nature, including the introduction of plumbing, heating and ventilation, or lighting system, upon any school building or upon any school property, made by any school district, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed $1,500, shall be done under separate contracts to be entered into by such school district with the lowest responsible bidder, upon proper terms, after due public notice has been given asking for competitive bids. (Section 751) However, prefabricated units may be bid as a single package.

9:6.2 What are the bidding requirements when buying furniture, books, school supplies, etc.?

All furniture, equipment, textbooks, school supplies and other appliances for the use of the public schools, costing $1,500 or more shall be purchased by the board of school directors only after due advertisement. Supplies costing $1,000 or more but less than $1,500 may be purchased from the lowest responsible bidder after soliciting sealed quotations from three or more firms, manufacturers, or dealers in such supplies. Supplies costing $1,500 or more shall be purchased by the board of school directors only after public notice has been given by advertisement once a week for three weeks in not less than two newspapers of general circulation. Certain specific articles of an instructional nature (such as maps, etc.) are exempt. (Section 807.1)

9:6.3 Are there exceptions to the requirement for bidding of school supplies?

Act 85 (1974) permits political subdivisions, or authorities created by political subdivisions, to participate in or purchase off contracts by the Department of General Services. Such a procedure exempts the political subdivisions from statutory requirements of competitive bidding.

9:7 Should a school district planning a school bond issue employ a bond attorney?

The School Code does not mention a bond attorney, but sound management dictates employing a bond expert or bond counsel.

9:8.1 May a school district construct or repair buildings using its own employes?

The board of school directors either may perform any construction, reconstruction, repairs, or work of any nature, where the entire cost or value, including labor and material, is less than $5,000, by its own maintenance personnel, or may have any such construction, reconstruction, repairs, or work performed by contract after soliciting bids from at least three bidders. (Section 751)

9:8.2 When contracting for a building construction, may a school board require contractor to use only competent workmen?

Section 752 of the Public School Code states that all contracts, awarded and entered into by any school district, contain a clause or stipulation requiring that no person shall be employed to do work under such contract except competent and first-class workmen and mechanics. No workmen shall be regarded as competent and first-class, except those who are duly skilled in their respective branches of labor and who shall be paid not less than the prevailing rate of wages established by the Department of Labor and Industry for organized labor in doing of similar work in the district where work is being done.

9:9 How are federal funds made available for construction of new school buildings or for the preparation of plans and specifications for new school buildings?

The secretary of education is designated and authorized to apply for any such grants, appropriations, or allocations, on behalf of the commonwealth of Pennsylvania, for any or all of the following: the construction, procurement, acquisition, and lease or rental of, public school buildings, facilities, or equipment. Such grants, appropriations or allocations from the federal government as may be received by the secretary of education or the state of Pennsylvania shall be paid into the state treasury. Disbursement of such funds from the state treasury shall be by warrant of the auditor general. (Section 2908)

9:10 Who determines the use and availability of school buildings during out-of-school hours?

The board of school directors. A school board may permit the use of its school grounds and buildings for social, recreation and other proper purposes under such rules and regulations as the board may adopt (Section 775).

9:11.1 May private or restricted meetings be held in public school buildings?

A board of school directors may make such arrangements as it may see proper with any officials or individuals for the temporary use of school property for schools, playgrounds, social, recreation, or other educational purposes, primaries and elections, and may permit the use of any school building for holding official meetings of the governing authorities of corporate or politic, governmental or quasi-governmental bodies.

9:11.2* May a school board rent or lease public school facilities to nonschool organizations?

Section 775 of the School Code states that a board of school directors has the power and authority to lease any of its respective school buildings, parts of buildings or empty buildings for any educational purposes, subject to approval by the Department of Education. The board shall consider such payments as proper to reimburse it for any costs resulting from the leasing of such school buildings or athletic fields. If the renting is for the holding of school or classes, the permission of the State Board of Education must first be obtained.

9:12 If a school board leases a facility to an organization, may admission fees be charged for meetings and entertainment held in school facilities?

Yes, and the funds raised by individuals, groups, associations, or corporations through the permissive use of school grounds or buildings, shall be the property of the individuals, groups or associations or corporations, and not the property of the school district; subject, however, to such arrangements as the board may, at its discretion, lawfully make. (Section 775)

9:13 Can the board of school directors rent a school building for its own educational use?

Yes, but the prior approval of the Department of Education must be obtained.

9:14 Who shall have final authority in granting use of a public school building?

The board of school directors. (Section 775)

9:15.1 May the school district be held liable for injuries occurring during use of school facilities by outside organizations?

Yes, if it can be adjudged that the school was negligent in some manner.

9:15.2 If a school board leases its building to a nonschool organization and there is a fire, who is responsible, the school board or the leasing group?

In case of a fire or panic occurring in any of the buildings, the owner or owners shall be liable for damages in case of death or personal injury. (Section 3154)

9:16 May the school building be used for "bingo" or similar games?

Any games of chances illegal in the commonwealth would be prohibited. (Section 775) However, any board of school directors may make such arrangements as it may see proper with any officials or individuals for the temporary use of school property for schools, playgrounds, social recreation, or other proper educational purposes.

9:17 Is it legal for the board of school directors or the school administrator to permit private persons to install candy or soft drink vending machines in the school building or on school district property?

Yes. The board of school directors has the power to establish, equip, maintain, and operate cafeterias (Section 504). Each board of school directors may adopt rules and regulations for its government and control (Section 407).

Vending machines may be used as adjuncts to cafeteria operations or as sponsored activities of school groups.

9:18 May the school building be used for a meeting sponsored by a political organization?

Yes. The board of school directors may: permit the use of its school grounds and buildings for social, recreation and other proper purposes, under such rules and regulations as the board may adopt; primaries and elections; and may permit the use of any school building for holding official meetings of the governing authorities of corporate or politic, governmental or quasi-governmental bodies created by authority of any act of Assembly. (Section 775)

9:19 May the school building be used by an organization under control of a religious denomination for religious instruction?

The board of school directors may not permit the use of its school grounds and buildings for religious purposes, but may permit such use for social, recreation and other proper purposes.

9:20 Is there a definite regulation as to the size of high schools?

No.

9:21 Are there state regulations as to the size of the site for school buildings?

In general, the following areas of usable acreages, as defined by administrative guidelines developed in the Department of Education for the State Board of Education, are considered to be optimum for school building sites.

Elementary	10 acres
Middle school	20 acres
Junior high school	20 acres
Junior-Senior high school	35 acres
Area Vo-tech school (part-time)	35 acres
Area Vo-tech school (full-time)	35 acres

The Department of Education has administrative authority to grant exceptions to these general site requirements in densely populated areas, for multischool buildings, and in cases where a large site might be financially prohibitive.

9:22 Does the selection of a site for a new school building demand the vote of the qualified voters of the district?

No. The affirmative vote of a majority of all the members of the board of school directors in every school district, duly recorded, showing how each member voted, shall be required in order to take action on the selection of sites for new school buildings. (Section 508) Act 34 signed into law, June 27, 1973, requires voter approval of school building projects that exceed certain cost criteria established in the act.

9:22.1 What are the general requirements of Act 34?

- Requires public hearings on all new buildings and substantial additions (more than 20 percent of the area and replacement value of existing structure) 30 days before the school district submits initial cost estimates to the Department of Education for approval.
- The stipulated allowable costs under the Act are: $2,800 per rated pupil capacity at the elementary level; $4,200 per rated pupil capacity for grades 7, 8 and 9; $5,200 per rated pupil capacity for grades 10, 11 and 12; $5,200 per rated pupil capacity for vocational-technical schools which cost per pupil excludes cost of equipment and fixtures.
- The stipulated allowable costs are to be adjusted annually beginning July 1, 1974, by the Department of Education based on a specified United States cost index of construction costs.
- Projects which exceed the stipulated cost must be submitted to the electors of the school district for their approval within six months prior to submission to the Department of Education for approval of final building construction cost bids.
- Site acquisition and development costs are not included in the costs used to determine the base cost of the project.
- The act assigns new powers to the Department of Education for project review and approval. It allows the department to employ engineers, architects, financial advisors, and other staff to carry out its new responsibilities.
- The act excludes from the approval process all repairs that do not exceed $15,000 per building. (Former law limited repairs without approval to those that did not exceed $2,000.)
- The law gives the State Board of Education power to establish standards for heating and ventilating systems, and gives the school board power to determine the type of heating and ventilating system to be used.
- The act gives to the secretary of education the power to deny approval for any school building project which fails to meet the standards of the state board.
- The law provides for a change in the Advisory Committee on Building Standards which make recommendations to the State Board of Education. Appointed by the governor, the advisory committee now is made up of: three architects, two registered engineers, two school administrators, two classroom teachers, one physician, one construction industry representative, two school board members who are not teachers or administrators, and two representatives of the general public.

9:23.1 May the voters of a district decide to make a gift of a closed school building to a public organization?

No. Only the board of school directors has the necessary power and authority to sell unused and unnecessary lands and buildings.

9:23.2 May a school board donate an unused school building to a municipality or museum?

Yes. Any school district of the second, third or fourth class, upon approval of two-thirds of the members of the board of school directors, may convey any unused and unnecessary lands and buildings of the district to the city, borough, town or township, the boundaries of which are coterminous with or within those of the district, without consideration, or for such consideration and on such terms of exchange or otherwise as may be agreed upon. (Section 707)

9:24.1 May a school district "condemn," for school purposes, private property?

Yes. This procedure is called "eminent domain."

9:24.2 How does one proceed under eminent domain?

Whenever the board of school directors cannot agree on the terms of its purchase with the owner or owners of any real estate that the board has selected for school purposes, the board of school directors, after having decided upon the amount and location thereof, may enter upon, take possession of, and occupy such land as it may have selected for school purposes, whether vacant or occupied, and designate and mark the boundary lines thereof, and thereafter may use it for school purposes; Provided, that no board of school directors may take by condemnation any burial ground, or any land belonging to any incorporated institution of learning, incorporated hospital association, or unincorporated church, incorporated or unincorporated religious association, which land is actually used or held for the purpose for which such burial ground, institution of learning, hospital association, church, or religious association was established. (Section 721)

9:25 Must there be Department of Education approval before temporary school quarters are used by a school district?

Yes, and such approval is granted only to continue during the period while a building is being constructed or remodeling completed.

9:26 Need a school board notify any agency before occupying a new school building?

Before any building or structure erected, adapted, remodeled, or altered is used or opened for occupancy, the owner shall notify the Department of Labor and Industry of the completion of the building or structure and a certificate of occupancy will be issued. (Section 3149)

9:27 Does the commonwealth share the cost of construction of new school buildings?

Yes. Section 2574 of the Public School Code provides that the state will share in any approved school construction to the extent of the school district's aid ratio multiplied times the approved annual rental costs.

9:28 Can the cost of construction of a new school building exceed the amount per pupil listed in the School Code?

Yes, but state reimbursement is based only on that portion of the cost set by the School Code. The school district must assume 100 percent of all costs over the legal ceilings. (See also 9:22)

9:29 Must every school building have a fire alarm system?

Yes. Section 3143 of the School Laws of Pennsylvania provides that there shall be installed such emergency lighting systems, sprinkler systems, and fire alarm systems in all school buildings as the Department of Labor and Industry may specify and which in its judgment are necessary to give proper protection from fire and panic to those employed, assembled, lodged or housed therein. No such systems shall be installed unless they are of a type approved by the Department of Labor and Industry.

9:30.1 Does the board of school directors have the legal right to establish its own traffic and parking regulations on the school property?

Yes. Act 110, enacted June 9, 1972, grants a school board the authority to make rules and regulations, not inconsistent with the Vehicle Code or local traffic ordinances, for the admission, control, movement and parking of vehicles on its school property.

9:30.2 Does a school board have authority to employ guards or campus policeman?

Section 778 of the Public School Code provides that any school district may apply to any judge of the court of common pleas of the county within which the school district is situated to appoint such person or persons as the board of directors of the school district may designate to act as policeman for the school district in policing the grounds belonging to the school district and protecting its property.

9:31 Can a board of school directors enter into an option agreement for purchase of real property, without the voters' authorization or consent?

Yes, and according to Section 508 of the School Code, all that is necessary is the affirmative vote of a majority of all the members of the board of school directors, duly recorded, showing how each member voted, to purchase, sell, or condemn land. However, such action is subject to the limitations of Act 185.

9:32 May a board of school directors sell a school building or the real property of a former district included in a reorganized district?

Section 298 of the Public School Code relates that all real and personal property, school building indebtedness, and rental obligations to an approved school building authority or nonprofit corporation, if any, or former school districts composing any reorganized school district shall become the property, building indebtedness and rental obligations of such newly established school district. Therefore, the school board of a newly reorganized school district may sell or properly dispose of any school property of any of the component districts of a reorganized school district.

9:33 May a school district purchase school equipment or a building on a lease-purchase contract?

Yes. Section 801 of the Public School Code grants this authority to enter into contracts and/or leases.

9:34 Can a school district grant an easement?

Section 791 of the School Code provides general authority for school districts to grant easements for improvement purposes.

9:35 Are "standard building plans" and specifications for school buildings available from the Department of Education?

No. Such plans are not required by law and none are available.

9:36 Who is responsible for the sanitary inspection of the public school building?

Section 1420 of the School Code charges the secretary of health to employe sanitarians or request local health authorities to assign a sanitarian to make a careful examination of the sanitary conditions of the school buildings and grounds as the regulations of the secretary of health may require.

9:37 Can a town lease an athletic field or playground from a school district?

Yes. Section 775 of the School Code grants the board of school directors discretionary authority to lease any part of its respective school building, equipment, premises, or playground, for any educational purpose.

9:38 What is the legal definition of the "school speed zone?"

This definition is found in the Pennsylvania Vehicle Code and sets the school speed limit at 15 miles per hour for all vehicles when passing a school building during school recess, or while children are going to or leaving school during opening or closing hours. Notice of such speed limit shall be plainly posted in school zones.

9:39 Is a school district subject to zoning regulations in regard to its buildings or proposed buildings?

Yes, where there are zoning laws in contrast with the proposed plans. Following the adoption of a comprehensive plan by any municipality or county, any proposed action of a school board relating to location, demolition, removal or sale of any school district structure, or land, shall be submitted to the planning agency for its recommendations at least 30 days prior to the execution of such proposed action. (Section 305 Pennsylvania Municipalities Planning Code.)

9:40 May a new school building be operated before it is completely finished?

Yes, upon special application. However, before any building or structure erected, or altered, is used or opened for occupancy, the owner must notify the Department of Labor and Industry of the completion of said building. If the Department of Labor and Industry finds, after proper investigation, that the building or structure complies with the requirements of this act, the department will issue to the owner a permit authorizing the occupancy or the use of the building or completed portion thereof. (Section 3149)

Chapter X

Insurance

10:1 Is it compulsory for a board of school directors to carry fire insurance on the school buildings?

No. However, Section 774 of the School Code grants the board of school directors full power and authority to insure any or all buildings against loss or damage by fire, if it so chooses.

10:2 Is it permissible for a board of school directors to insure with a mutual fire insurance company?

Yes, provided the company is authorized to do business in the commonwealth. This permission has been verified by Act 303, signed December 6, 1972, which act amended Section 774 of the Public School Code.

10:3 Are there standard forms for school fire insurance policies?

No. The board of directors may enter into any contract or contracts it may deem proper with any person, firm or corporation for the purpose of insuring against loss or damage by fire. (Section 774a)

10:4 Where should fire insurance policies be kept?

Good management dictates to keep such policies, together with the inventory of the contents, in a safe deposit vault or box, outside of the school building.

10:5 Of what value to a school district is a perpetual inventory of the contents of a school building?

It is most valuable for it enables the board of directors to keep fire insurance coverage in line with the value of the contents, as well as providing a list of items in the event a claim must be submitted.

10:6 Is it compulsory for a board of school directors to carry liability insurance?

No. However, Act 303, signed into law December 6, 1972, provides that the board of school directors shall have the full power and authority to enter into contracts for the purpose of insuring every employe and school director against liability for damages sustained by pupils or others as a result of an employe's or director's negligence in the performance of duties. Virtually all districts do carry liability insurance on buildings, grounds, and on all employes. (Section 774)

10:7.1 Is a board of school directors immune from liability as a governmental agency?

It has been a long-established principle of common law that the school district, or board of directors, being an agent of the state, is immune from liability in damages for injuries resulting from the negligence of its officers, agents and employes. The courts of Pennsylvania have consistently followed a modification of this principle by taking the position that immunity is the rule only where the injury grew out of the performance of a governmental, as opposed to a proprietary, function — that districts would be held liable if the function in question was of a proprietary nature. (*Ford vs. Kendall Borough School District*, 121 Pa. 543, 15A 812 1888; *Pintek vs. County of Allegheny*, 186 Pa. Sup. 366, 142A (2nd) 296 1958; *Dillion vs. York City School District*, 422 Pa. 103, 220A, (2nd) 896 1966). However, on May 24, 1973, the Pennsylvania Supreme Court, in the case of *Ayala vs. the Philadelphia City School District*, decreed that citizens do have the right to sue school boards and that the centuries-old doctrine of "soverign immunity" for school districts is no longer justifiable.

10:7.2 What is meant by "proprietary function" of a school board?

Proprietary is defined as an activity which no local government unit is statutorily required to perform, or if it may also be carried on by private enterprise, or if it is used as a means of raising revenue, then the function is proprietary. (*Morris vs. School District of Township of Mount Lebanon*, 393 Pa. 633, 144A. (2nd) 737 1958).

10:8.1 Of what legality is a "waiver of liability" or a "permission slip" frequently used by schools for pupils to sign when they go on school-sponsored trips or on other occasions?

A school cannot secure immunity from liability by such a device. However, such a form is important to show that the school uses reasonable care with pupils, and to show that the parent had prior notice of the trip.

10:8.2 Do bus companies, which carry pupils, have to carry liability insurance?

Section 1362 of the School Code requires that all private motor vehicles for hire employed in transporting pupils be adequately covered by public liability insurance in such amounts as the board of school directors shall require.

10:8.3 Is the school board liable for injury to children carried on a contracted bus?

Where "school groups" are transported exclusively by buses owned by, or under contract with, a school, they are school buses within the meaning of Section 828a of the Vehicle Code and the school district is not liable for children transported thereon, unless negligence by the school or school personnel can be shown. (See also 10:7.1)

10:9.1 Are school districts liable for accidents to pupils while in school?

In general, there is liability only when negligence can be proven. (See also 10:7.1)

10:9.2 Is any protection afforded to teachers and other school district employes if a suit or claim is brought against them for alleged negligence in the performance of their duties?

The commonwealth has not prescribed a standard procedure to be followed in the event of a suit or claim of negligence against a school employe. However, the employe, in general, is afforded the following protection: the notice of a suit or claim is immediately forwarded to the school superintendent, who then informs the insurer of the claim or suit. The insurer should immediately assign an adjustor or investigator to the case. The adjustor will consider the evidence, attempt to make settlement and, if necessary, assign a lawyer to defend the school employe. All legal fees will be assumed by the insurer. The PSBA Insurance Trust, established in 1971, has made such insurance assuredly available to all school districts in a standard form.

10:10 If a pupil is sent out of the school building to the store, or on a similar errand, upon the request or assignment of the principal or teacher, and the child is injured, where does the liability fall, if any?

If a pupil is injured while engaged in "running" an errand for the teacher, especially if the errand is of a personal nature, the teacher may be liable. In addition, if a third party is injured as a result of the pupil's negligence, the teacher may be held liable under the rule of respondant superior which holds that the master is liable for the negligence of his agent. In general, it is best to refrain from sending any pupil on an errand.

10:11.1 In the case of an accidental injury in competitive sports, conducted on the part of the school, is there school liability?

It is generally held that a school district is immune from liability for injuries, in the absence of wrongdoing (negligence), suffered by an athlete involved in competitive sports. Only in cases where the court has ruled the activity to be proprietary has the school district been held liable. (*Hoffman vs. Scranton School District,* 67D and C301 Pa. 1949) (See also 10.7.1)

10:11.2 May a school board appropriate money to pay for "athletic" injuries?

Under Section 511 of the School Code, the board of directors is authorized to appropriate monies for the payment of medical and hospital expenses incurred as a result of participation in any athletic event including practicing or transportation or for the purchase of accident insurance for participants.

10:12 What is the responsibility of schools in case of accident involving children going to and from school?

Bus students are the school's responsibility from the time the pupil is picked up until he is properly discharged. However, Section 1062 of the Public School Code makes it mandatory for every bus carrying pupils to be adequately covered with liability insurance.

10:13 Is the board of directors responsible for the conduct of a pupil while off the school grounds during noon hours?

Section 1317 of the School Code holds that teachers and principals have authority over the pupil from the time he or she leaves home in the morning until he or she returns home from school in the afternoon, and this would appear to cover noon recess.

10:14 May a board of directors act as self-insurers for protection against suits of negligence?

Boards of directors are authorized, but not required, to purchase liability insurance. In the absence of such insurance protection, any awards against the school would become the responsibility of the board of directors. In light of court awards made in cases of negligence, it appears advisable that all boards purchase liability protection.

10:15 May a board of school directors insure all its pupils against personal accidents regardless of whether the district is responsible for the accident or not?

It appears that Section 511 of the School Code authorizes the board of directors to appropriate monies for the purchase of accident insurance only for those students involved in athletic events or games or practice and transportation associated therewith.

10:16 Are school custodians and bus drivers protected from law suits and judgments, in the event of school accidents, in the same manner as teachers?

Yes. Section 774 of the School Code affords similar protection to all school employes. (See also 10:7.1)

10:17 May the school district be liable for maintaining an "attractive nuisance," such as making available playground equipment, on the school grounds?

Although the school is not responsible for the supervision of playgrounds after school hours, negligence in proper maintenance of facilities may result in a liability suit. The decision may well depend upon whether the court considers playground maintenance a governmental or proprietary function and whether the injured person is a trespasser or not.

10:18 Does the board of directors have the legal right to deduct funds from employe's salaries for the payment of various group insurance programs?

Yes. Section 513b of the School Code grants the board of school directors authority to deduct from the employe's pay, salary, or compensation such part of the premium of insurance policies as is payable by the employe and as may be so authorized by the employe in writing.

10:19 Are schools required to carry workmen's compensation insurance?

Yes. This is a mandate under the Workmen's Compensation Laws of Pennsylvania.

10:20 Does a school have the right to participate in the promotion of the pupil accident insurance plans?

Schools are generally permitted to make available to pupils information concerning such insurance plans as a service to the pupils and their parents. However, the school law does not give the school the authority to promote, as such, a student insurance plan in which the benefits accrue to a private firm or individual.

10:21 Is it permissible and legal for school districts to arrange group insurance programs, such as life insurance, for school district employes?

Yes. Under the Provisions of Section 513 of the Public School Code, any school district may make contracts of insurance with any insurance company, or nonprofit hospitalization corporation, or nonprofit medical service corporation, authorized to transact business within the Commonwealth, insuring its employes and retired employes, under a policy or policies of group insurance covering life, health, hospitalization, medical insurance, accident insurance, annuities, or pensions.

10:21.1 May school districts provide for contributory group life insurance for employes?

Act 296 (1974) provides that the trustees of a fund established by two or more employers may provide for group insurance whereby covered employes contribute to the premiums for such coverage. The PSBA Insurance Trust is a qualified vehicle for such contributory insurance.

10:22 Does the "$1,500 Bid Law" apply to the purchase of school insurance?

No. The "$1,500 Bid Law" as well as the law pertaining to purchases which exceed $1,500, are applicable only to the purchase of school supplies. However, it is not uncommon (and is legal) for the board to solicit bids for the school insurance program. (Section 807.1)

10:23 Can a bidder on a school construction job be required to secure surety bonds from a particular insurance company or broker?

No. However, the insurer must be reliable and satisfy the requirements of the board of directors.

10:24 Are school district employes covered by Pennsylvania unemployment insurance?

No. School districts are generally exempt from the provisions of the unemployment compensation laws. (Note, however, that the federal supplemental unemployment compensation laws may affect some school employes.)

10:25 How may a board of directors secure information on the reliability or financial status of an insurance company with whom it wishes to do business?

By contacting the PSBA Insurance Trust, or by inquiring of the Pennsylvania State Insurance Department.

10:26 May school districts establish tax-sheltered annuity plans for their employes?

Yes, and this was recently clarified and sanctioned by Act 289, approved December 6, 1972, which amended Section 1142 of the School Code. This act provides that salaries and increments may be reduced by written agreement between the school district and the employe for the purpose of the school district purchasing a tax-sheltered annuity contract, a retirement endowment policy or similar annuity contract.

10:27 Is it legal, as many school districts do, to purchase accident insurance policies for the members of the football team without purchasing similar insurance for other pupils?

Section 511 of the Public School Code limits the authority of a board of directors to the purchase of such insurance to pupils who participate in athletic events or games.

10:28 May an insurance contract or contracts be purchased from or through employes of the school district?

This is forbidden by the School Code when it directs that no contract or contracts of insurance may be purchased from or through any person employed by the school district in a teaching or administrative position. (Section 513a and 774c)

10:29 Is there any insurance protection afforded funds of the school district which may be deposited in the bank?

The Public School Code, in Section 623, provides that monies belonging to any school district and deposited with a banking institution in this commonwealth, are insured with the Federal Deposit Insurance Corporation, up to the amount to which such corporation is or may hereafter be authorized to insure deposits in any one name. (See also Section 622.) Act 72 (1971) stipulates pledged collateral required of banks to secure deposits of public funds.

10:30 Should an accident occur involving a member of the school district's safety patrol, where is the liability?

As long as the school district operates its school patrol in accordance with the provisions of the School Code, there can be no liability attached to the school district or any of its employes unless negligence can be proved. Major provisions include parental approval, the forbidding of a patrol member to direct vehicular traffic, and the member must not be in any portion of the road intended for vehicular traffic. (Section 510) (See also 10:7.1)

10:31 Is there any liability on the part of the school district for teacher salaries when the school board is forced to close the school?

Yes. Section 1153 of the School Code details that, when a board of school directors is compelled to close a school or schools on account of contagious disease, the destruction or damage of the school building by fire or other destructive causes, the school district is liable for the salaries of the teachers for the terms for which they were engaged.

Chapter XI

School curricula

11:1.1 Who has the power to prescribe courses of study for a school system in Pennsylvania?

The Department of Education has the authority to "prescribe minimum courses of study for the public schools," while the School Code designates required courses of study to include health and physical education, English, history and constitutional government, driver education, and flag history and flag courtesy, physiology and hygiene (1513), humane education (1514), fire and emergency evacuation drills (1517). The board of school directors shall arrange a course of study adapted to the needs of the pupils. (Section 1512)

11:1.2 Does the State Board of Education have authority to set curriculum regulations?

Yes. Pursuant to Section 1317 of the Pennsylvania Administrative Code, 1929, the state board, on March 17, 1969, adopted a set of curriculum regulations and charged the Department of Education to institute them as of July 1, 1969, and to administer and supervise the same. These regulations are found in state board regulations Chapter 5. However, it is the stated policy of the State Board of Education, through the secretary of education, to delegate to a school board the greatest possible flexibility in curriculum planning consistent with a high quality of education for every pupil in the commonwealth.

11:2 Are experimental curriculum programs possible in Pennsylvania?

Yes. The secretary of education has the authority to waive any and all state board curriculum regulations for experimental programs. Such experimental programs are to be evaluated by the Department of Education yearly and may be terminated at the discretion of the secretary of education.

11:3.1 Who has the power to designate textbooks for the school?

Section 803 of the Public School Code allows school boards of all second, third, and fourth class districts to adopt textbooks recommended by the local superintendent for use within the schools in the coming term.

11:3.2 What is the law on purchasing textbooks for nonpublic schools?

Act 195, enacted July 12, 1972, added a new section (923A) to the Public School Code and mandates that the secretary of education directly, or through the intermediate units, purchase textbooks, instructional materials, and equipment and loan the same to nonpublic schools who request them. Act 169 of 1974 sets an annual limit on the purchase to not exceed $15 multiplied by the number of children residing in the commonwealth and who are enrolled in the kindergarten through grade 12 in the nonpublic schools of the commonwealth. However, on May 19, 1975, the U.S. Supreme Court invalidated those sections of acts 194 and 195 (1972) which authorized the granting of auxiliary services, instructional services and instructional materials to nonpublic schools. The court upheld those portions of the acts authorizing the loan of textbooks. (*Meek vs. Pittenger*)

11:4 Are there any "state adoptions" or state control of school textbooks in Pennsylvania?

In regular school subjects, no. However, the only publication approaching the status of a state-adopted or approved textbook is that prepared by the secretary of education for use in the mandated instructional program in fire dangers and prevention of fire waste. The School Code states: "Such books of instruction shall be published at the expense of the state, under the direction of the secretary of education and shall be distributed in sufficient quantities for the use of the teachers in schools as herein provided. The curriculum of all schools shall include some regular and continuous study of such subjects during the entire school year." (Sections 1518 and 1551)

11:5 Is there any limitation on frequent change of textbook in a school system?

There being no reference to this in the School Code, local control determines frequency of change.

11:6 Does the school have the right to provide free textbooks?

Section 801 of the Public School Code establishes the principle in Pennsylvania of free textbooks, free school supplies, and other appliances such as materials and workbooks.

11:7 Are "drug abuse" training programs permitted in Pennsylvania schools?

Yes. In fact, Act 181, approved July 12, 1972, not only permits such programs, but, to encourage them, makes financial grants available through the facilities of Governor's Council on Drug and Alcohol Abuse.

11:8 May textbooks containing seditious or disloyal matter be used in the public school?

The School Code is silent on this matter. In general practice, it is difficult to get agreement on what is seditious or disloyal; hence, the final action is left to the discretion of the school board. (See also 3307-3320.3)

11:9.1 What is the procedure in the case of a suspected subversive textbook?

A grievance could be filed with the board of school directors who may or may not decide the textbook to be subversive. In the absence of convincing proof or evidence that a book is subversive, citizens of the community cannot require a board to remove a book from use in the curriculum. Of course, the practice can be challenged judicially in which case the burden of proof lies with the plaintiff.

11:9.2 Are public schools in Pennsylvania required to give a course on the effects of communism?

Although the Public School Code says nothing about the teaching of communism and its effects, the Department of Education has required such instruction for more than a decade. Specific course outlines are not laid down and local districts are free to approach the subject from various aspects. Common approaches have been through problems of democracy courses, western world cultures, or similar offerings.

11:10 Must instruction and training in fire drills be given to pupils in public schools in Pennsylvania?

Yes. Section 1518 of the School Code makes such drills mandatory

11:11.1 May Pennsylvania high schools legally operate automobile driver education and training courses for pupils and offer credits for same?

Yes. Authorization for driver education programs is found as a state mandate. (Sections 1519 and 1519.1)

11:11.2 Are safety glasses required in school shops?

In Section 3128 of the related School Laws of Pennsylvania, we find that "every teacher, student, visitor, spectator, and every other person in any shop or laboratory in public or private schools, colleges and universities who is engaged in or is within the area of known danger created by (1) the use of hot liquids, solids or gases, or caustic or explosive materials, or (2) the milling or sawing, turning, shapping, cutting, grinding or stamping of solid materials, or (3) the tempering, heat treatment or kiln firing of metals and other materials, or (4) gas or electric welding, or (5) the repairing or servicing of vehicles shall wear industrial quality eye protective devices at all times while engaged in such activities or exposed to such known dangers."

11:12 What supervisory control does the Department of Education hold over the local school in the matter of curricula?

By the authority vested in it in Section 2809 of the School Code, the Department of Education can maintain control over the curriculum by prescribing minimum courses of study for the public schools and by authorizing accredited secondary schools to determine and evaluate secondary school subjects, grant credits, certificates and diplomas. The department further maintains authority to "inspect and require reports of the educational work in the elementary and secondary schools and institutions, wholly or partly supported by the state, which are not supervised by the public school authorities: provided, that a copy of the report of the inspection of any such institution which may be made shall be sent to the head of such institution.

Much wider powers are implicit in the department's obligation to administer all the laws of the commonwealth with regard to the establishment, maintenance, and conduct of the public schools. The Department of Education cannot prescribe penalties for violation, but is the agent by which such legal power is translated into action. Hence, nonconformance or nonperformance by individual school districts in matters of curriculum mandates or standards become the regulatory function of the department, which can invoke penalties provided for under the State Code. (Section 1005).

11:13.1 What is the definition of "instruction time" for pupils?

The State Board of Education has defined instructional time as the time of the school day devoted to planned pupil instruction provided as an integral part of the school program under the direction of certificated school employes.

11:13.2 What is the minimum required length of the instruction day?

The minimum hours of actual instruction time for pupils on a school term of 180 days, as set and approved by the State Board of Education at its May 1973 meeting, shall be as follows:

	MINIMUM			RECOMMENDED		
GRADE	DAY	WEEK	YEAR	DAY	WEEK	YEAR
K	2.5	12.5	450	***	***	***
1-6	5.0	25.0	900	5.5	27.5	990
7-12	5.5	27.5	990	6.0	30.0	1080

Note, however, that Act 80 (1969) allows for fewer than 180 days so long as 900 elementary hours and 990 secondary hours are provided.

11:13.3 Are half-day sessions permitted?

Yes, half-day sessions, as provided in Section 1504 of the School Code, are permissible under special circumstances for one year with the permission of the secretary of education.

11:13.4 Is early withdrawal for college entrance permitted?

Yes. State board regulation, Chapter XI, Section 11.4 adopted May 11, 1973, permits pupils attending college full time, to withdraw from high school prior to graduation. These students shall be dropped from the school district's membership rolls and from the calculation base for subsidy purposes.

11:13.5 Is there a law that requires the flag salute and pledge of allegiance by pupils of the public schools?

No.

11:14.1 Are Pennsylvania high schools required to use special examinations?

No. The selection of and use of student achievement and other tests lies with the school district authorities.

11:14.2 Does a public school have the responsibility concerning the curriculum of nonpublic schools in its district?

No. Local school districts have no responsibility concerning the curriculum of nonpublic schools in their district.

11:15.1 What are Pennsylvania's requirements for graduation from a senior high school?

The State Board of Education, in its Curriculum Regulations, adopted March 17, 1969, set forth the following conditions for high school graduation; 13 planned courses for credit in grades 10, 11 and 12 shall be required for graduation for all students and shall include the following:

1. English — three planned courses.
2. Health education — a planned course can be taken three periods a week for one year or one period a week in grades 10, 11 and 12.
3. Mathematics — one planned course.
4. Physical education — given at least two separate times weekly in each of grades 10, 11 and 12.
5. Science — one planned course.
6. Social studies — two planned courses, one of which shall be world cultures, the other United States history (culture).
7. The remainder of the 13 credits may be established at the discretion of the school district's school board.

11.15.2 What is a "unit of credit?"

For general course planning purposes only, the State Board of Education defines a unit of credit as a planned course of 120 clock hours of instruction.

11.15.3 Can a school grant credit by examinations only?

Yes. The State Board of Education Curriculum Regulations indicate that credit may be awarded by a school principal, after consultation with the teacher, to regularly enrolled students who successfully indicate mastery of a planned course regardless of the time spent in formal instruction in the course.

11.15.4 May credits be earned in summer school?

Summer school planned courses may be offered for credit or noncredit.

11.15.5 Are credits transferable from one high school to another?

The State Board of Education in its Curriculum Regulations requires that credits granted in an approved secondary school shall be accepted by all public secondary schools in the commonwealth, upon transfer of a student.

11:15.6 Must credits be earned by attendance at a regular secondary school or summer school?

No. The State Board Curriculum Regulations permits a student to earn credits through correspondence study, summer school, summer camp, USAFI (United States Armed Forces Institute), special examination, college level advanced placement courses, approved independent study, or in any appropriate manner approved by the secretary of education.

11:16 May a student attend college part time?

Yes, with the approval of the high school principal.

11:17 If a student should leave high school prior to graduation to attend college full time, would he or she ever receive a high school diploma?

Yes. The high school diploma shall be awarded to those students upon evidence of successful completion of the freshman year of college.

11:18 Is there any special curriculum consideration possible in the case of a pupil who is actually not benefitting from the regular existing program?

Yes. The State Board of Education, in Curriculum Regulations Chapter V, Section 5.71 (e), decrees that any pupil 14 years of age or older who is not benefiting from the regular program, with the permission of the teacher, the principal and the pupil's parents, may have an individualized schedule containing those subjects from which he can profit to prepare him for an occupational skill. All such programs shall include appropriate instruction in citizenship communication skills.

11:19 Are high schools required to include racial and ethnic group history in their curricula?

Yes. The State Board has ordered that every course in United States history and Pennsylvania history taught in the elementary and secondary schools shall include the major contributions made by Negroes and other racial and ethnic groups in the development of the United States and the commonwealth. Inter-group education concepts shall also be included in appropriate curricular areas. Act 322 (1974) established an ethnic heritage studies center in the department.

11:20 Has the State Board of Education defined a curriculum for kindergartens?

No, except that kindergartens should not intrude on elementary school requirements. Social awareness, getting along with others, learning give-and-take, basic art and music skills are some of the frequently found activities.

11:21 What are the elementary school curricular requirements as set forth in state board regulations?

The State Board of Education, in its standards (Chapter V), requires the following planned courses to be included in the elementary curriculum each year: fine arts, health, language arts, mathematics, science, physical education, instruction in the metric system and social studies. Elementary schools may also include in their curriculum planned courses in modern foreign languages, practical arts, remedial and developmental reading.

11:22 Did the State Board of Education establish minimum curricular requirements for a junior high school?

Yes. The junior high school curriculum is defined in the State Board Curriculum Regulations, Chapter V, 5.73 and shall include the following planned courses:

1. Adapted physical education — accepted in lieu of regular physical education.
2. Developmental reading
3. English — Two planned courses.
4. Fine arts — One planned course in both art and music.
5. Industrial arts and homemaking — One planned course of both, taught in either grades 7 or 8 or the equivalent divided between grades 7 and 8, required in grade 9.
6. Laboratory science — Two planned courses.
7. Mathematics — Two planned courses.
8. Physical education — Two separate periods per week in all grades.
9. Social studies — To include civics and United States history.
10. Modern foreign languages

The program should include additional three planned courses with content selected to reflect student needs.

11:23.1 What are the defined requirements for curriculum in a middle school?

Since the grade structure of a middle school may vary from grades 5, 6, 7 to grades 6, 7, 8, 9, the State Board of Education did not prescribe a curriculum for a middle school but directed that the curriculum embracing elementary and junior high courses, and possible senior high courses, should be developed by the individual school staff and presented for approval to the secretary of education.

11:23.2 Are the minimum curriculum requirements the same as the minimum requirements for graduation?

Yes. These were detailed in the answer to question 11:15.1 of this document. However, the senior high staff has authority to add planned courses in many areas, a few of which are: adapted physical education, business education, conservation and outdoor education, consumer education, personal and family survival, driver education, aviation education, etc.

11:24 Is there a periodic evaluation requirement for secondary schools?

Yes. All schools — public, nonpublic, nonprofit, and private — shall be subject to periodic evaluation of their curricular offerings by the secretary of education to review in compliance with State Board of Education requirements.

11:25 Are "approval" and "accreditation" the same thing?

No. The status of "approved" is awarded by the Department of Education to secondary schools which satisfy the evaluation standards established by the secretary of education. "Accreditation" is awarded to those secondary schools which are surveyed by the Middle States Association of Colleges and Secondary Schools and satisfy all standards of the association, which is a private agency.

11.26.1 Are schools required to offer a course in library science?

Yes. The State Board of Education, in Chapter V, Section 5.33 of its Curriculum Regulations, has required that by September 1970, every school district shall have in operation a comprehensive library program to encompass grades kindergarten through grades 12.

11:26.2 Must a school employ a school librarian?

Yes. Section 5.31 (a) and (b) of the State Board Curriculum Regulations require that every school district shall employ at least one full-time, certified school librarian and at least one full-time certified elementary school librarian for the system.

11:26.3 How many books must an approved library have?

The State Board of Education, in Chapter V, Section 5.32 of its Curriculum Regulations, set September 1970 as the deadline when each school district must have a library book collection of no less than 10 carefully selected titles per elementary and secondary pupil, or a collection of 10,000 titles per school, whichever is smaller.

11:27 Other than graduation from a senior high school, how may a person obtain a secondary school diploma?

The secondary school diploma may be issued to an applicant who is a resident of Pennsylvania who either:

1. Presents evidence of full matriculation and satisfactory completion of one full year or 30 semester credits in an accredited college, or
2. Obtains a passing score in the high school level tests of the General Educational Development (GED) tests of the Department of Education.

11:28 Where or to whom would one apply for the GED Test?

The GED tests are administered by and applications should be filed with:

The Bureau of Credits Evaluation
Department of Education
Box 911
Harrisburg, Pennsylvania 17121

Chapter XII

State aid

12:1 What is the legal basis for the payment of state aid money to the public schools?

Article 3, Section 14, of the Constitution of the Commonwealth holds the General Assembly responsible to provide for the maintenance and financial support of a thorough and efficient system of public education to serve the needs of the commonwealth.

12:2 How are payments on account of instruction determined?

Section 2502 of the Public School Code provides that each school district be paid by the commonwealth on account of instruction of the district's pupils an amount to be determined by multiplying the district's aid ratio times the district's actual instruction expense per weighted average daily membership or by $750, whichever is less.

12:3.1 What acts of the Legislature constitute the basic regulations for state subsidy payments to school districts?

The Public School Code was amended by Act 580, enacted February 1, 1966, and by Act 88, signed August 8, 1971 and was further amended by Act 125, signed June 26, 1974. These acts form the primary basis for all elements of the current state's reimbursement system.

12:3.2 Why is Pennsylvania's subsidy system often referred to as an "equalization program?"

The philosophy behind an equalization program is to have available, for educational instructional purposes, an equal amount of money behind each student to be educated. To do this, the Pennsylvania subsidy system provides, through its aid ratio procedure, for $750 as the equalization base and for the state to pay the amount equal to the district's aid ratio times the equalization base, per pupil. If a district is wealthy, its aid ratio is low; if less wealthy, the aid ratio is higher. Hence, to equalize the total amount behind each pupil, the state pays more to a poor district and less to a more able district.

12:4.1 How is the "aid ratio" determined?

The aid ratio represents the commonwealth's share of reimbursable cost. Section 2501 of the Public School Code indicates that the aid ratio is determined by the following formula:

$$\text{Aid Ratio} = 1.000 - \left(\frac{\text{District MV/WADM}}{\text{State MV/WADM}} \times .5 \right)$$

12:4.2 For the above formula, where does one obtain the market values?

The Pennsylvania State Tax Equalization Board determines the market value for every school district and certifies this listing, every June 30, to the secretary of education. The state's market value is the sum total of all the school district's market values on the State Tax Equalization Board's certificate.

12:4.3 What is WADM?

WADM means **weighted average daily membership**, which differentiates between the weighting given to elementary and secondary pupils.

12:4.4 How is the school district's WADM computed?

The School Code outlines this determination by multiplying the school district's ADM by the following weighted factors:

a. Kindergarten, half day	0.50
b. Kindergarten full day	1.00
c. Elementary	1.00
d. Secondary	1.36

12:4.5 What is meant by "minimum subsidy?"

Section 2501 of the School Code defines minimun subsidy as follows: For the school year 1973-74 and each year thereafter, in no case shall a district receive for each pupil in WADM an amount less than 10 percent of the actual cost of instruction or $75, whichever is the lesser amount.

12:4.6 What is meant by the term "weighted pupil?"

The School Code, Section 2501, defines weighted pupil as a value placed upon the district's pupils in average daily membership at various levels of instruction. This weighted factor is used in determining the school district's WADM (Weighted Average Daily Membership) for subsidy purposes.

12:4.7 What is ADM?

Average daily membership (ADM) means the average daily number of resident pupils in the school district eligible, and enrolled, to attend the schools. It does not mean attendance by pupils.

12:4.8 How is the "Actual Instruction Expense per Weighted Average Daily Membership" calculated in the law?

Section 2501 of the School Code charges the secretary of education to calculate, for each school district, the actual instruction expense per weighted average daily membership for each district pupil.

12:4.9 What expenses are included in the actual instructional expense?

The actual instruction expense includes all general fund expenses of the district except those for health services, transpórtation, debt service, capital outlay and homebound instruction. From this cost shall be deducted the amount received from the state for driver education; special class operation; payments of tuition by district patrons, and all monies received from the state or federal government. The actual instruction expense so determined, when divided by the weighted average daily membership for the district shall be the actual instruction expense per weighted daily membership. (Section 2501)

12:5.1 What is the present dollar value of the reimbursable instruction cost?

Act 125 which became law July 1, 1974, revised the reimbursable base for the 1973-1974 school year, and thereafter, to $750 per pupil.

12:5.2 Is the state's share of the instructional cost 50 percent of each school district's actual instructional cost?

No. The 0.50 used in the formula to compute the aid ratio indicates that the state will pay 50 percent of the total **instructional cost** for the state. The state's share varies from school district to school district as the aid ratio varies. The smallest state share goes to a school district with an aid ratio of .1000 (the minimum guarantee), while the largest share goes to the poorer districts. The average state share; that is, the average of all the school districts, is intended to be the 50 percent figure.

12:5.3 How is the school district's share figured?

The school district's share of its instructional cost is found by subtracting the state's share from the amount budgeted for instruction.

12:5.4 Can the state's share equal 100 percent support?

At least in theory, if the district maintains its average instructional cost below the $750 maximum state subsidy base, and is a "poor" district in terms of market value per pupil and is eligible for poverty and sparsity, (or density) payments, the state's share could equal 100 percent of the cost of instruction. Section 2502.5 of the School Code as amended by Act 125 (1974) establishes 100 percent of instructional cost as the maximum state subsidy to which a district shall be entitled.

12:5.5 What action can be taken when budgeted funds are not adequate to cover current operating expenses and debt service?

Section 636 of the Public School Code provides for emergency funds for current expenses and debt service. It provides that, when in any fiscal year, after borrowing money in anticipation of current revenues, and finding the receipts from loans to be inadequate to meet the expenditures of the fiscal year's budget, the board may appeal to the secretary of education for permission to incur a temporary debt for the purpose of providing funds for current expenses. After reviewing all the facts present, the secretary may either refuse or may grant permission to borrow the additional funds. In case of approval, the secretary of education shall designate the maximum length of the term and set a maximum limit of the total amount of such temporary indebtedness.

12:6.1 What is "school building aid"?

Section 2575 of the School Code authorizes the commonwealth to subsidize any school district making long term mortgage payments on account of school construction. This reimbursement is determined by multiplying the amount of the school district's payment, times the reimbursable percentage for that particular building, times the district's current aid ratio. (For projects approved prior to March 22, 1956, the district's capital account reimbursement fraction for the year 1967 may be used if it is higher than the current aid ratio.)

12:6.2 What reimbursement is made if a school district makes a lump sum preliminary payment, or full payment for construction?

Such preliminary payments, or full payments for construction, are made to reduce or prevent incurring long term debt and its interest costs. In such cases the commonwealth pays the school district an amount determined by multiplying the district's current aid ratio times the amount of the payment made by the district. (The district's capital account reimbursement fraction for 1967 may be used instead of the aid ratio, if it is higher.)

12:6.3 Is state aid money available for the purchase of building sites in advance of need?

Yes. This is part of a district's long-range planning. The School Code, in Section 2574.1, states that whenever a school district acquires a site for a school building in advance of its needs and in accordance with a long-range master plan for school building construction approved by the State Board of Education, the commonwealth pays in the year of such acquisition, 100 percent of the reimbursement due to the district.

12:6.4 What happens if a school district doesn't build on the site obtained in advance of needs?

If such a site is not used by the district for school building purposes within a period of 10 years from date of purchase, the amounts paid under this section shall be returned to the commonwealth by the district within two years of the end of such 10 year period. If such monies are not returned, the Department of Education shall withhold the amount due from any reimbursement payable to the school district.

12:6.5 Can a school district rent school buildings, without provision for acquisition, and receive state aid for such rental payments?

Section 2575.2 of the School Code provides for annual subsidy by the commonwealth since 1972 in such cases. Leases must be approved by the Department of Education and such buildings, or portion of buildings, must comply with the standards and regulations of the State Board of Education and the Department of Labor and Industry (703.1). The reimbursable amount is determined by multiplying the district's annual rental payments, times the reimbursable percentage, times the district's aid ratio.

12:7.1 How is pupil transportation aid calculated in the state reimbursement program?

School districts shall be paid by the commonwealth for every school year on account of transportation which, and the means and contracts providing for which, have been approved by the Department of Education. The amount of reimbursement is determined by multiplying the approved cost of approved reimbursable pupil transportation incurred by the district, by the district's aid ratio. In addition, the commonwealth will pay to each school district qualifying, a payment for excessive cost of transportation, an amount to be determined by subtracting from the cost of the approved reimbursable transportation the sum of the commonwealth first computed transportation payment, plus the product of one-half mill (0.0005) times the latest market value of the district as determined by the State Tax Equalization Board, provided such amount is not negative. Note, however, that Act 125 (1974) guarantees not less than 50 percent state support for nonpublic school transportation required under Act 372 (1972) and transportation required because of hazardous conditions. (See also 14.8.1)

12:7.2 If a school district owns its school buses, is there a depreciation allowance?

Yes. Section 2541 of the School Code provides that school districts which own their own vehicles are entitled to an annual depreciation charge of 10 percentum, to be calculated on the basis of the approved cost at which the district acquired the vehicle for which depreciation is claimed. Vehicles purchased prior to January 1, 1956, have the number of depreciation payments limited to 10. With respect to vehicles purchased on or after January 1, 1956, the annual depreciation charge shall not exceed $700 for such vehicles. The number of annual depreciation charges is limited so as not to exceed the cost of the vehicle. In no case shall the commonwealth pay, in depreciation charges, more than $10,500 for any one vehicle.

12:7.3 Does the state have an obligation to provide state aid for board and lodging in lieu of transportation?

This is rarely used; however, Section 2542 of the School Code directs that, in any case where the commonwealth is required to reimburse a school district on account of pupil transportation, and the school district, in lieu of such transportation, is authorized to and does pay for suitable board and lodging for any pupil, the commonwealth will pay to the school district an amount to be determined by multiplying the cost of such board and lodging by the district's aid ratio. Provided that in no case shall the commonwealth's share of the cost exceed $1 per day per pupil for the actual number of days such pupil is in attendance at school.

12:7.4 Does the state reimburse school districts for transportation of special education pupils who travel in a separate or special bus?

Yes.

12:8.1 In the instructional subsidy, what is the "density factor?"

Section 2501 of the School Code explains that a density factor shall be assigned for those school districts whether coterminous with a city, borough, town or township or not, whose population exceeds 10,000 per square mile.

12:8.2 How is the density payment arrived at?

A school district qualifying under the density factor shall be paid by the commonwealth on account of excess expenditures per weighted average daily membership, not to exceed $250 in excess of $400, an amount determined by multiplying the excess expenditures by the aid ratio or by .375, whichever is greater, and by the number of weighted pupils, such amount to be in addition to any other payments for such pupils. A school district qualifying under the density factor may, in lieu of the above payments, elect for any school year to be paid a sum of $30 per weighted average daily membership, such amount to be in addition to any other payments for such pupils.

12:8.3 If a school district, entitled to a density payment, should merge with another district, does the new merger qualify for density entitlement?

Act 132, signed June 22, 1970, amended Section 2501 of the School Code to provide that a school district that was declared a density district prior to 1969-70 or any year thereafter or joined a merger, the total new district, if the population is 10,000 per square mile or less, shall qualify for a modified density payment equal to the ratio of its population per square mile to 10,000 of the amount to which it would have been entitled if its population were 10,000.

12:8.4 How does a school district qualify for "sparsity payment?"

Section 2501 of the School Code directs that a sparsity factor be assigned to those districts whose population is less than 50 per square mile.

12:8.5 How much does a sparsity payment amount to?

A school district qualifying under the sparsity factor shall be paid by the commonwealth on account of excess expenditures per weighted average daily membership, not to exceed $250 in excess of $400, an amount to be determined in the same manner as it is found for the density factor.

12:8.6 If a sparsity school district joins a merger, is the merger considered a sparsity district?

Act 273, signed into law November 15, 1972, amended the School Code to provide that the merger inherits a portion of the sparsity status of any of its components. Act 273 states the entitlement as follows: "Any reorganized or merged school district comprised of one or more component school districts any of which has been assigned a sparsity factor . . . shall qualify for a modified sparsity payment which shall be the ratio of its population per square mile to 50 subtracted from 2.00 and multiplied by the amount to which it would have been entitled had its population been less than 50 per square mile."

12:8.7 How are dental services reimbursed?

Every school district which employs one or more dental hygienists for the purpose of dental hygiene services to children of school age is to be reimbursed by the commonwealth. Reimbursement shall be the actual cost of the dental hygiene services as certified to the secretary of health, less any charges that shall be deemed unreasonable by him, but for any school year shall not exceed the sum of $1 multiplied by the actual number of children enrolled in the school for the entire school term who receive such dental hygiene services. (Section 2505.1)

12:8.8 What are the payments on account of homebound children?

The School Code, in Section 2501.1, states that every school district regardless of classification, shall be paid by the state on account of homebound pupils on a WADM basis as if the child were in regular class attendance. Instructions for homebound pupils are currently paid at a $4 per hour rate.

12:8.9 How are the payments "on account of poverty" computed?

Payments on account of poverty children are explained in Section 2502.3 of the School Code, as follows:

> Each school district shall be paid, in addition to any other subsidy to which it is entitled, an amount on account of children of low income families equal to the sum of: (1) the number of children aged five (5) to seventeen (17) years inclusive, in the district of families having an annual income of less than two thousand dollars ($2,000) and (2) the number of children aged five (5) to seventeen (17) years, inclusive, in such district of families having an annual income in excess of two thousand dollars ($2,000) which receive Commonwealth payments on account of dependent children under Title IV of the Federal Social Security Act, multiplied by one hundred and sixty-five dollars ($165). (Act 125)

The secretary of education shall determine the number of poverty children from the most recent satisfactory data available.

12:8.10 What are "super poverty" payments?

Section 2502.4 of the School Code provides for additional poverty payments where the percentage of low income families is relatively high within the school district. Act 125 (1974) amended this to a range of $30 per student to as much as $150 per student dependent upon percentage of low income families.

12:8.11 Who are considered as "migratory children?"

"Migratory child" is defined as any child domiciled temporarily in any school district for the purpose of seasonal agricultural employment but not acquiring residence therein, and any child accompanying his parents or guardian who is so domiciled.

12:8.12 How much are the payments on account of migratory children?

Section 2502.2 of the School Code directs that every school district regardless of classification shall be paid by the commonwealth in addition to other reimbursement by the commonwealth, the sum of $1 per day not exceeding 40 days during any school term for each migratory child attending any of its public schools.

12:8.13 How much are the payments on account of standardized driver education programs?

Every school district complying with the standardized driver education program established by the Department of Education shall be paid, by the commonwealth from the Motor License Fund, an amount determined by multiplying the number of pupils who have completed the high school standardized driver education program by a basic figure of $35 dollars per student. (Section 2504.1)

12:8.14 What are the flat rate payments for vocational programs?

Section 2504 of the Public School Code points out that every school district regardless of classification, and every intermediate unit with reference to vocational departments of high schools or vocational schools, shall be paid by the commonwealth for every school year, the sum of $35 in vocational agriculture and vocational industrial education; $20 in vocational home economics education; and $50 in vocational distributive education per pupil in average daily membership in vocational curriculum.

12:8.15 How much do school districts receive on account of pupils enrolled in area vocational-technical schools?

Section 2504.2 of the School Code provides that the commonwealth pay every school district for every school term on account of resident pupils enrolled in area vocational-technical schools as follows:

1. For each full-time pupil in attendance, either the difference between the per pupil cost as provided in the approved budget or the per pupil cost for current expenses, whichever is less, for current expenses in such area vocational-technical school, and the per pupil cost for current expenses in the district's high school which the pupil attends as a tuition pupil, or $75, whichever is less.
2. For each part-time pupil attending an area vocational-technical school, the difference between the cost per pupil as provided in the

budget, or the per pupil cost for current expenses, whichever is less, for current expenses in the vocational-technical school, and an amount to be determined by multiplying the cost per pupil for current expenses in the district's high school or in the high school which the pupil attends as a tuition pupil by a fraction, the numerator of which shall be the number of hours per day the pupil attends an area vocational-technical school and the denominator shall be six or $75, whichever is less.

12:9.1 How are payments computed for programs for exceptional children?

Before the first day of July, every school district planning to conduct classes or schools for the exceptional shall submit, for prior review and approval to establish the amount on which reimbursement will be paid by the Department of Education, an estimate of the cost of classes or schools for exceptional children to be operated by the district during the ensuing school year, and for transportation to and from classes and schools for exceptional children to be conducted by the district.

Every school district shall be paid by the commonwealth an amount determined by multiplying the average daily membership in a course or courses for exceptional children: (1) at the elementary level, by an amount determined by subtracting the "instruction cost per elementary pupil" from the "instruction cost per special class pupil," (2) at the secondary level, by an amount determined by subtracting the "instruction cost per high school pupil" from the "instruction cost per special class pupil." (Section 2509)

12:9.2 How would one compute the "instructional cost per special class pupil?"

To find the instruction cost per special class pupil, Section 2509 of the Public School Code directs one to add: (1) salaries of directors and supervisors of special education, public school psychologists, principals of special schools and assistants, teachers of approved special classes for exceptional children, clerks and assistants employed in the district's program for special education; (2) district's contribution to the retirement fund on behalf of the above-mentioned employes; (3) the cost of textbooks and supplies of the second class used in the district's special education classes or schools; (4) the cost of telephonic system equipment which enables handicapped children to remain in their homes and still participate in classroom activities. Divide the sum of (1), (2), (3), and (4) on that part which is approved by the Department of Education for reimbursement by the total number of pupils. The quotient so obtained shall be the instruction cost per special class pupil.

12:9.3 Does the state share in the tuition costs of certain exceptional children in approved institutions?

Yes. Section 1376 of the School Code explains that when any child between the ages of six and 21 years resident in the commonwealth, who is blind or deaf or afflicted with cerebral palsy and/or brain damage and/or muscular dystrophy and/or mentally retarded and/or socially and emotionally disturbed, is enrolled in such a school with the approval of the Department of Education, the school district in which such a child is a resident shall pay 25 percentum of the cost of tuition and maintenance of such child in such school or institution, as determined by the Department of Education; and the commonwealth shall pay out of funds appropriated to the department for special education, 75 percentum of the cost of their tuition and maintenance, as determined by the department. If the resident of such child in a particular school district cannot be determined, the commonwealth shall pay, out of monies appropriated to the Department for Special Education the whole cost of tuition and maintenance of such child. In no event shall the total cost of tuition and maintenance for blind, deaf, cerebral palsied and/or brain damaged and/or muscular dystrophied and/or socially and emotionally disturbed and/or mentally retarded **residential** students exceed $8,500 per year, nor may the cost for tuition of blind, deaf, cerebral palsied and/or muscular dystrophied **day** students exceed $5,100 per year, nor may the cost for tuition of brain damaged and/or socially and emotionally disturbed and/or mentally retarded **day** students exceed $4,100 per year. (Act 144, 1975)

12:9.4 Is there a maximum amount payable for maintenance of certain exceptional children in approved institutions?

Yes. Act 144, approved December 15, 1975, amended Section 1376 of the School Code as noted in answer 12:9.3.

12:10 When shall state aid be paid to the school districts?

State subsidy on account of instruction shall be paid three times annually on the first day of October, February and June. (Act 125, 1974)

12:11 To whom is the state aid paid?

Section 2522 of the School Code directs that state payments to school districts or intermediate units shall be made to the treasurer.

12:12 Who certifies to the state aid due each school district?

Section 2516 of the School Code charges the secretary of education to certify to the state treasurer the amount due each school district, who, in turn, shall pay over such amounts to the credit of the respective school districts.

12:13 Who has the responsibility for computing the amount of a school district's state aid?

Section 2515 of the School Code charges the secretary of education to ascertain and determine the amount of reimbursement due to school districts, intermediate units, and vocational schools. This decision is based on the data and material contained in the certificates and annual reports which school districts, intermediate units and vocational schools are required to file with the secretary.

12:14.1 What is the penalty for falsifying reimbursement reports?

The penalty, as defined in Section 2514 of the School Code, states that any officer of a school district or intermediate unit who knowingly falsifies any report or certificate required for the purpose of obtaining reimbursement shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than $300, nor more than $1,000, or undergo imprisonment for a term of not less than one month, nor more than six months or both, in the discretion of the court.

12:14.2 Can budgeted funds be used for other purposes or exceeded?

The general rule is that funds budgeted for a specific purpose shall not be used for any other purpose, except that the school board, by majority vote, can transfer money from one item to another during the last nine months of the school year. However, funds within a given general budget category may be transferred from one specific account to another specific account within that budget category.

12:15.1 Is state aid ever "withheld" from a school district?

Yes. The secretary of education may refuse to authorize the payment of any amount payable to any school district who at any time fails or refuses to pay to the members of its teaching and supervisory staffs the full amount of the minimum salaries and increments required by law. Also, the secretary of education may withhold payments due a school district if the district fails to file reports on time or is delinquent in paying its due share to the State Public School Employes Retirement Board, payments due other state agencies, and payments due the United States Social Security Administration.

12:15.2 Are annual financial reports required by the secretary of education?

Yes. Section 633 of the School Code charges that the secretary of education shall require an annual financial report from all school districts including a list of the amount of bonds or other indebtedness that becomes due during the fiscal year, together with the amount paid on each item of indebtedness.

12:15.3 What happens if a school board becomes delinquent in paying school building rentals?

In all cases where the board of directors fails to pay or to provide for the payment of any rental or rentals due the State Public School Building Authority, the secretary of education is charged, under Section 785 of the School Code to notify such board of school directors of its obligation and shall withhold out of any state appropriation due such school district an amount equal to the rental or rentals owing by such school district.

12:15.4 May the Department of Education deduct monies from a school district's entitlement and pay it over to another agency?

To facilitate payments by school districts to schools or institutions in which deaf or blind, or cerebral palsied and/or brain-damaged and/or muscular dystrophied, or socially or emotionally disturbed children are enrolled, and to intermediate units, of amounts due from such districts, the Secretary of Education is authorized to withhold from any monies due to such districts out of any state appropriation and to pay such sums to intermediate units or other institutions.

12:15.5 What is the penalty for employing an unqualified teacher or principal?

Any school district or intermediate unit, or area technical school, that employes any teacher or principal who does not hold any form of teacher certification (to teach in the public schools of the commonwealth) valid for the subjects or grades in which the teacher is giving instruction, shall forfeit an amount for each such unqualified employe found by subtracting from the mandated minimum salary of the employe's category an amount found by multiplying the district's aid ratio times the minimum salary in question. (Section 2518)

Chapter XIII

Federal aid

13:1.1 Is there, at present, federal financial aid to education in Pennsylvania?

Yes. There are programs covering nearly all facets of the educational program.

13:1.2 What programs are covered by the several federal assistance acts?

A listing of federal programs administered by the Office of Education for 1976 indicates that 131 separate programs are currently funded. Some of the principal programs are:

1. Bilingual education (Title VII, Elementary and Secondary Education Act).
2. Educational Innovation and Support (Title IV-C, Elementary and Secondary Education Act).
3. Follow through (Community Services Act, Title V, P.L. 93-644).
4. Innovative and Exemplary Programs (Title III, Elementary and Secondary Education Act).
5. Indian Education (Indian Education Act, P.L. 92-318).
6. Programs for Disadvantaged (Title I, Elementary and Secondary Education Act).
7. Programs for migratory children (Title I, Elementary and Secondary Education Act).
8. School Maintenance — Impact Aid (School assistance in federally affected areas, P.L. 81-874).
9. National Student Loan Program (Higher Education Act of 1965, Title IV-E as amended).
10. College Work Study (Higher Education Act of 1965, Title IV-C as amended).

11. Library Services (Title I, Library Services and Construction Act)
12. Programs for the Handicapped (Title VI-B, Education of the Handicapped Act)
13. Vocational Education Programs (Vocational Education Act of 1963 as amended)
14. Adult Education (Adult Education Act as amended)

13:1.3 What is the nature of the federal "Impacted Area" program?

The Federal Public Law 874, enacted in 1950, is designed to give federal assistance to school districts which are suffering financial hardships due to sudden impacts caused by federal activities. Such impacts may take the nature of large numbers of children brought into the school district through the establishment of a military base; the rapid expansion of an industrial concern in an area to undertake federal contract work with a resulting influx of workers with children of school age; the ownership of large, federally owned housing developments from which no local tax revenue may be obtained; or the establishment of various other federally owned institutions such as veterans' hospitals and the like which are free from taxation but often provide residency for large numbers of school children who must be educated by the local school district under state laws. The latest amendments to PL 81-874 also provide aid for the effect of federal public housing.

13:1.4 Does the federal government ever aid school districts in school construction?

Public Law 815, passed by Congress in 1950, was the companion bill to Public Law 874 and applies to the construction of school buildings to house children who have come into a district as a result of federal activity. The law is based on the same general concept as Public Law 874 and provides assistance for construction of needed school buildings.

13:2.1 Did Pennsylvania have to pass a law to accept the federal aid?

Yes. In 1962 the commonwealth of Pennsylvania, by law, accepted the provisions of the Act of Congress, "The Educational Finance Act of 1949," which states: "To authorize the appropriation of funds to assist the States and Territories in financing a minimum foundation education program of public elementary and secondary schools, for the general welfare, and for other purposes."

13:2.2 Who is responsible for federal funds when received by the State Department of Education?

The state treasurer is designated as the custodian of the federal funds apportioned by the commonwealth of Pennsylvania and to receive the money paid to the state from the United States Treasury.

13:2.3 Who has been designated as the educational authority to apply for state level federal grants?

The secretary of education is designated and is authorized to apply for any such grants, appropriations, or allocations, on behalf of the commonwealth of Pennsylvania.

13:2.4 May local school districts apply directly for federal funds?

Yes. Many of the federally funded programs are available in the form of direct grants to local educational agencies (local school districts). This is especially true of ESEA programs.

13:2.5 What is the responsibility of the board of school directors in regard to federal funds?

Whenever federal funds are made available to school districts, such funds may be expended by the board of school directors, for the purposes for which they are made available even though provisions therefore were not made in the annual estimates or budget of such school district. (Section 609)

13:2.6 What are some of the program areas for which the secretary of education may request federal funds?

The federal government has specified these several program areas:

1. Any classification or division of public education and related programs, including early childhood, elementary, secondary, general, vocational, technical, adult, or extension education, and libraries which is or will be administered by, or under the jurisdiction or authority of the secretary of education.
2. To help provide school library resources.
3. The improvement of teacher preparation.
4. The establishment and maintenance of scholarships and scholarship-loan programs.
5. The administration of the office of the secretary of education in connection with such grants, appropriations, or allocations, which may now or hereafter be available or apportioned to the commonwealth of Pennsylvania or any local public school jurisdiction or other state public education agency therein. Or for any other purpose for which federal funds shall be made available to state educational agencies for the aid of education.

13:3.1 What is the National Defense Education Act?

The largest federal commitment to the national general education level before 1965 was embodied in the massive National Defense Education Act of 1958 (PL 85-864) designed to improve the teaching of science, mathematics, and foreign languages at all school levels. The NDEA reflected Congress's tendency to accept federal government responsibility for education mainly as a reaction to a national "crisis." The program was first presented as temporary, but soon took on a permanent cast.

13:3.2 What programs were intended to be financed under the several NDEA "Titles?"

Title I – Contained declaration of purpose, prohibited federal control of education, and defined terms used in the bill.

Title II – Provided student loan funds to enable needy students to continue their education. Preference was given to students intending to teach in elementary or secondary schools and those with ability in science, mathematics, engineering, or modern foreign language.

Title III – Provided matching grants to the states for public schools and 10-year loans to private schools for the purchase of equipment for use in teaching science, mathematics, and foreign languages or for "minor" remodeling to make room for the equipment.

Title IV – Authorized 5,500 three-year graduate fellowships, with preference to those interested in college testing.

Title V – Authorized grants to state educational agencies to assist them in establishing and maintaining programs of testing and of guidance and counseling in secondary schools.

Title VI – Authorized monies to colleges for establishing advanced institutions for teaching modern foreign languages to train public school teachers.

Title VII – Authorized funds for public or nonprofit groups, and individuals to conduct research into modern teaching aids, such as television, radio and motion pictures, and to publicize the results.

Title VIII – Provided grants to the states to assist them in training individuals for employment as skilled technicians in occupations requiring scientific knowledge.

Title IX – authorized the National Science Foundation to establish a Science Information Service to disseminate scientific information and develop new programs for making the information available.

ESEA, which stands for Elementary and Secondary Education Act, was passed by Congress in 1965 (PL 89-10), and for the first time in history provided general federal aid to elementary and secondary schools.

13:3.3 What school subject areas are of particular emphasis under the NDEA Act?

The National Defense Education Act, which initially was concerned only with science, mathematics and foreign languages, was expanded in 1964 to include instructional resources in history, geography, civics, English and reading.

13:4.1 What is ESEA?

ESEA, which stands for Elementary and Secondary Education Act, was passed by Congress in 1965 (PL 89-10), and for the first time in history provided general federal aid to elementary and secondary schools.

13:4.2 What was the nature of and the intent of the five "Titles" under the ESEA provisions?

Title I – Provided monies to aid school districts with impoverished children. The program provided federal grants to the states (which would in turn distribute the funds to school districts) on the basis of the number of children from low-income (under $2,000 a year) families times 50 percent of each state's average expenditures per school child. The school district could spend the funds in any way approved by state and federal educational agencies, but they had to take into account the needs of children who attended nonpublic schools.

Title II — Authorized monies for the acquisition of school library resources, textbooks and other printed instructional materials for the use of children and teachers in public and private elementary and secondary schools.

Title III — Authorized grants to the states for supplementary educational centers and services to provide "vitally needed" educational services not otherwise available in quality or quantity and to establish model school programs.

Title IV — Authorized the government to make grants to, or enter into contracts or jointly financed cooperative arrangements with, universities, colleges, and other public or nonprofit private agencies, institutions, and organizations and to individuals for research, surveys, and demonstrations in the field of education and the dissemination of information derived from such research.

Title V — Authorized a program to grant monies to stimulate and assist states to strengthen their state educational agencies.

13:4.3 What is the current status of ESEA?

P.L. 93-380, the 1974 Education Amendments Act, carried forward and extended the various areas of federal support for elementary and secondary education. Included was extended support for the handicapped, support for right to read programs, etc.

13:5 Does the General Assembly in any way control federal aid funds?

Yes, in two ways. General revenue sharing funds allocated by the federal government to the state may be used, and have been used, for educational purposes. Act 117 (1976) requires that federal funds shall be appropriated by the General Assembly much in the fashion that appropriations are made for state funds.

Chapter XIV

Transportation

14:1.1 Is a school district required to furnish transportation for pupils?

No, but Section 1361 of the Public School Code directs that a school district is authorized to provide free transportation to and from school for pupils who reside one and one-half miles from an elementary school and two miles from a high school.

14:1.2 If a school district transports kindergarten pupils, will it be reimbursed?

Yes. Act 372, signed December 29, 1972, amended Section 1361 of the School Code to include kindergarten pupils in the reimbursable count of pupils and the mile-and-a-half elementary distance applies to kindergartens.

14:1.3 Does the mile-and-a-half or two-mile radius apply to areas with "hazardous" walking conditions?

No. Act 372, approved December 29, 1972, added the provision to the School Code that requires transportation to be supplied to all pupils, regardless of the distance they reside from the school, if they reside in areas where there are no sidewalks and the road or traffic conditions are such that walking on the road shoulder constitutes a hazard to the safety of the child.

14:1.4 Who determines if a highway is "hazardous" for walking purposes?

The law charges the Bureau of Traffic Safety in the Department of Transportation to so certify.

14:2.1 Is parochial and private school transportation mandatory?

The Public School Code, in Section 1361, provides that: When provision is made by a board of school directors for the transportation of resident pupils to and from the public schools, the board of school directors shall also make identical provisions for the free transportation of pupils who regularly attend nonpublic elementary and high schools not operated for a profit.

14:2.2 Does Act 372, signed December 29, 1972, limit transportation to nonpublic school pupils to the boundary limits of the resident school district?

No. In fact, Act 372, in authorizing pupil transportation to nonpublic school pupils, specifies that such transportation shall be to any nonpublic school within the school district or to one not more than 10 miles outside the school district boundaries by the nearest highway.

14:2.3 **Does this 10-mile provision apply to vo-tech and special schools?**

No. Act 372 states that area vocational-technical schools and special schools and classes, regularly serving eligible district pupils, are exempt from the 10-mile distance limitation.

14:2.4 **Do new routes have to be established for nonpublic school pupils?**

Nonpublic pupils may be transported on regular public school routes, but new routes shall be established as needed to lawfully accommodate all eligible pupils, public and nonpublic, to and from the schools they attend.

14:2.5 **If the school bus travels to a nonpublic school outside the school district, is the school district responsible for the pupils of the other district who might live along the bus route?**

No. A school district is responsible only to its own resident pupils.

14:2.6 **If the nonpublic school is outside the 10-mile limit, is the school district responsible to transport an attending pupil to a point 10 miles from its boundary?**

No. The school itself must be within the 10-mile limit.

14:2.7 **Does the nonpublic school have to change its time schedule of classes and calendar to agree to the public school schedule?**

No. The Department of Education guideline for Act 372 provides that transportation of nonpublic pupils shall be provided during regular school hours and on such dates and periods that the nonpublic school is in regular session in accordance with the school calendar adopted by the nonpublic school authorities. The variances between public and nonpublic school hours should be reduced by the school officials to a reasonable minimum.

14:2.8 **If the public school is closed, or closes due to inclement weather, and the nonpublic school is open, does the public school have to operate its buses to the nonpublic school?**

No. See amended guidelines for Act 372 published in *ILS* No. 25, June 22, 1973.

14:3.1 **Act 372 provides for "field trips." What travel is included in a field trip?**

For the purposes of Act 372, a field trip is defined as a nonproprietary excursion, part of the integral school instructional program and provided under the direction of a professional employe of the school district.

14:3.2 **If the public school schedules a field trip, may nonpublic pupils go along?**

Act 372 provides that when field trips are provided to public school pupils, identical provisions must be made for district pupils attending nonpublic schools. When a field trip is scheduled, notice must be given to the nonpublic school officials as to the nature of the trip, the destination, the times and other relevant details together with an invitation to participate for an identical number of students of a corresponding grade or segment of the school.

14:3.3 Is there a distance limitation on field trips?

Act 372 specifies field trips to and from any point within the commonwealth.

14:3.4 Are costs of furnishing field trips reimbursable from the transportation subsidy?

No.

14:4.1 Is pupil transportation mandatory in all school districts?

Act 372 does not require a school district to provide free transportation at all to any pupils, but if it does, it must be provided to all pupils alike — public and nonpublic.

14:4.2 Are any school districts exempt from transportation requirements?

No. Act 372 applies to all school districts within the commonwealth.

14:5 Must bids for transportation contracts be advertised?

No. The awarding of transportation contracts can be, and usually are, the results of negotiations; however, there is nothing in law to prevent a school district from advertising for bids on its transportation — and some school boards do.

14:6 Must contracts for transportation be approved by the Department of Education?

Yes, if they are to receive payments from the commonwealth. Section 2541 of the School Code states that school districts are to be paid for pupil transportation, providing the means and contracts providing for it have been approved by the Department of Education.

14:7 Are school buses purchased on bids?

Yes. The School Code, in Section 807.1, states that the school directors shall accept the bid of the lowest responsible bidder (kind, quality and material being equal) but shall have the right to reject any and all bids, or select a single item from any bid. We may assume from this that the school board must approve a school bus before purchase, or it has the right to reject the bid.

14:7.1 Can school districts buy buses through the State Department of General Services?

Yes. School districts may purchase buses off a list coordinated through the Department of General Services. In this event, bidding is not required of the local school district.

14:8.1 How is state aid for pupil transportation calculated?

There is no simple short answer to this question. Section 2541 of the School Code provides that pupil transportation aid is calculated by multiplying the cost of approved reimbursable pupil transportation by the district aid ratio. In addition, the commonwealth will pay to each district, qualifying for a payment for excessive cost of transportation, an amount determined by subtracting from the cost of the approved reimbursable transportation the sum of the commonwealth transportation payment plus the product of one-half mill times the latest market value of the district as determined by the State Tax Equalization Board provided such amount is not negative. However, Act 125 (1974) provides that the required transportation for nonpublic school pupils, and required transportation for hazardous conditions, will be reimbursed at not less than 50 percent of cost.

14:8.2 Does the commonwealth recognize a depreciation factor in district-owned buses?

Section 2541 of the School Code directs that the commonwealth pay to school districts which own their own vehicles an annual depreciation charge of 10 percent, calculated on the basis of the approved cost at which the district acquired the vehicle for which depreciation is claimed. These annual depreciation charges are limited so as not to exceed the cost of the vehicle as approved by the Department of Education at the time of the purchase. In no case shall the commonwealth pay more than $10,500 for any one vehicle.

14:9.1 Do school districts receive state financial aid for out-of-district transportation to nonpublic schools?

Yes. Since Act 372 enacted December 13, 1972, requires school districts to provide identical transportation services to public and nonpublic pupils alike, and since Act 372 provides for transportation of nonpublic pupils to an out-of-district school within a 10-mile distance of the school district boundary, the distance and number of pupils in this out-of-district route are to be included in and counted in the transportation application for reimbursement. (See also 14:8.1)

14:9.2 Does the state reimburse a school district only for transportation by bus?

No. Section 1362 of the School Code lists reimbursement for free transportation furnished pupils by either school conveyances, contracted school buses, private conveyances, railways and PUC common carriers.

14:10 Is it necessary that the driver of a school bus have a bus driver's license?

Yes. Every school bus operator must be so licensed and shall take, and pass, the bus driver's test conducted by the Pennsylvania Department of Transportation.

14:11 What statutory insurance must be carried by private motor vehicles employed in transporting pupils?

Section 1362 of the School Code requires that all vehicles shall be adequately covered by public liability insurance in such amounts as the board of school directors shall require.

14:12 Is it necessary that teacher supervision be furnished bus pupils being transported to and from school?

No, but schools may place a chaperone on buses operating to and from school, and are required to provide chaperones on all field trips.

14:13 Is there an age limit for drivers of school buses?

Yes. The Pennsylvania Vehicle Code states that it shall be unlawful for any person who is under the age of 18 years to operate a motor vehicle of the bus type in the transportation of pupils to or from school.

14:14 May the Department of Education withhold reimbursement for transportation to schools?

Yes. Section 2543 of the School Code authorizes withholding of transportation subsidy payments if the school district fails to file appropriate reports and statements.

14:15 Are public school buses inspected at regular intervals in Pennsylvania?

Yes. Under the Highway Safety Code, school buses are to be inspected twice each year as are any other vehicles. However, a special inspection for school buses alone is found in Section 3206 of *The Pennsylvania School Laws.* This special ruling requires that every vehicle which is used for the transportation of school children shall be inspected by the Pennsylvania State Police sometime during every August, or prior to operating such vehicles for the transportation of school children during the school year.

14:16 Are there other regulations and specifications imposed on public school buses by the Bureau of Traffic Safety in Pennsylvania?

Yes. Every school bus must satisfy the standards for safety as promulgated and adopted by the Department of Transportation.

14:17 Are school districts reimbursed by the state for providing transportation for pupils to and from technical schools?

Yes. Section 2541 authorizes school districts to transport such pupils and to count same in the application for reimbursement.

14:18 What is the law in Pennsylvania in relation to vehicles overtaking or meeting buses transporting children to or from school?

The Vehicle Code states that on highways having roadways not divided by safety islands or physical traffic installations, the driver of any vehicle approaching or overtaking a school bus which has stopped for the purpose of receiving or discharging one or more school children shall stop his vehicle not less than 10 feet from the school bus and keep his vehicle stationary until every school child shall have entered the bus or left the bus and reached the side of the highway. This same rule applies to vehicles overtaking a school bus which has stopped for the purpose of receiving or discharging pupils on highways having dual or multiple roadways separated by safety islands or physical traffic separation installations. On highways having dual or multiple roadways separated by safety islands or physical traffic separation installations, the drivers of a vehicle on another roadway approaching a school bus which has stopped for the purpose of loading or unloading children shall reduce the speed of the vehicle to not more than 15 miles per hour, and shall not resume normal speed until his vehicle has passed the school bus and any child who may have alighted from it or is about to enter the school bus. If the bus is parked at the curb for the purpose of receiving children directly from a school or discharging children to enter a school which is located on the same side of the street, drivers of vehicles may pass the bus without stopping but at a speed not in excess of 15 miles per hour. (Section 3208)

14:19 School buses use two sets of flashing lights. What is the meaning of each?

A bus operator, when nearing a pupil pick-up or discharging stop, when not more than 100 feet therefrom, sets the flashing amber lights in operation as a warning to motorists that he is about to stop. Then, when the bus stops, the flashing red lights are operated until the last child is safely off the highway and the bus starts to move. Motorists shall stop on the flashing red lights.

14:20 What is the usual distance that pupils must walk on a side road to a main trunk school bus route?

Section 1362 of the School Code states that this distance must not be over one and one-half miles.

14:21 Must all school buses be painted the same color?

Yes. The School Code, in Section 3207, and the National School Bus Standards state that every bus shall be a uniform color and any school bus purchased or repainted shall be painted national school bus chrome.

14:22 May a school bus driver accept extra compensation from pupils or parents for transporting pupils?

No. Section 1365 of the School Code states that it is unlawful for any driver or owner of a vehicle transporting pupils under a contract with a school district to demand, request, or accept any compensation for transporting pupils, other than the compensation stipulated in the contract.

14:23 Must a school bus driver's employment application be filed with the Bureau of Traffic Safety in the Department of Transportation?

Yes. Both the School Code in Section 1365, and the Bureau of Highway Safety require that a standard application form be prescribed and furnished by the bureau and that no position of school bus driver shall be filled unless such application is filed with the Bureau of Highway Safety.

14:24 May a school bus driver be questioned about previous crimes he may have committeed before employment?

Yes. In fact, such questions are part of the standard application form that must be completed by the applicant before employment.

14:25 May a school bus driver declare the roads on his bus route "hazardous?"

No. The Bureau of Traffic Safety of the Department of Transportation is the only agency authorized by law to declare any highway to be hazardous to walking pupils.

14:26 Must the school bus driver receive a physical examination?

Yes. This is a requirement of the Highway Safety Bureau, which states that a bus driver must receive and pass such an examination to be given by the physician for the school district by which he is employed. (Section 3204)

14:27 Must the school bus be identified by a sign?

Yes. The Vehicle Code requires that every bus shall be labeled in the front and in the rear with black letters, not less than six inches in height, with the words "School Bus" showing to the outside. Any school bus purchased or repainted shall be labeled in front and in the rear with black letters, not less than eight inches in height, with the words "School Bus" showing to the outside.

14:28 Are emergency evacuation drills required in all school buses?

Yes. This is a requirement defined in Section 1517 of the School Code, which provides that all schools using or contracting for school buses for the transportation of school children shall conduct on school grounds two emergency evacuation drills on buses during each school year; the first to be conducted during the first week of the school term and the second during the month of March, and at such other times as the chief school administrator may require.

14:29 Are loading zones for school buses a requirement of the board of school directors?

Yes. The Highway Safety Code states that every school district transporting pupils by school bus shall establish and maintain loading zones at or near all schools to or from which pupils are transported, and shall establish school bus loading zones along the highways traveled by school buses.

14:30 Is it lawful for school buses to stop at any place other than the established loading zones?

No. When loading zones have been established at or near a school or along a highway, it shall be unlawful for a school bus operator to stop his bus to pick up or discharge pupils at any location other than at such loading zones.

14:31 May school bus drivers strike?

Yes. Drivers of district-owned buses are public employes and have the limited right to strike as detailed in Act 195, the Public Employe Relations Act.

14:32 May a school district operate "early and late runs" to accommodate pupils participating in co-curricular activities?

Yes.

14:33 May a school bus be leased to another school district?

Yes. In Section 775 of the School Code, we find that the board of school directors shall have power and authority to lease any part of its respective school building, equipment, and premises, or any vacant building, for any educational purpose.

14:34 May the school charge a fee to those who ride on the school bus?

No. The School Code states, in Section 1361, that when transportation is provided, it is to be free and paid out of district funds.

14:35 Is a school district required to establish a new school bus route for pupils who are eligible for it, but who move into a school district after the budget has been approved?

Yes. Act 372, signed December 12, 1972, states that a school district that transports pupils is obligated to provide free transportation to eligible pupils both to public and nonpublic schools.

14:36 May a school board erect "silent policemen" along highways to indicate and reduce the traffic speed within a school zone?

No, not the school board, because the Highway Safety Code provides that such warning figures may only be placed along the highways at the discretion of the "local authorities" in counties, cities, boroughs, incorporated towns, townships and school districts. However, Section 526 of the School Code permits any school board to contribute funds to another political subdivision for the erection and maintenance of traffic control devices.

14:37 Is there a speed limit for school buses established by the commonwealth?

Not specifically, but school buses are expected to stay within the speed limits as posted along the highways.

14:38 May a teacher in a school system also serve as a bus driver?

Yes.

14:39 Is there a required amount of seating space for each pupil carried on a bus?

Yes. Section 3207 of *The School Laws of Pennsylvania* requires that at least 13 inches of seating space be provided for each child carried on the bus.

14:40 Must a school bus be equipped with a fire extinguisher?

Yes. Each bus shall be equipped with at least one fire extinguisher in good condition and ready for use.

14:41 Is it legal to have a radio installed in a bus?

No. The school laws state that no bus shall be equipped with a radio or have one installed, except for one used for intercommunications or civil defense purposes. (Section 3207-13)

14:42 Are speed recording devices required on school buses?

No. They are permissible, but nothing in the school laws requires their use.

14:43 May a school district permit a pupil to attend the schools of another district because of an inconvenience in providing transportation for him?

Yes. Section 1313 of the School Code provides that the board of school directors of any district may, on account of convenience of access, or any other reason, permit any pupil to attend the schools of another district.

14:44 May private conveyances be used in transporting children to and from school?

Yes. The School Code, in Section 1362, states that the free transportation of children may be furnished by using either school conveyances, private conveyances, electric railways, or other common carriers.

14:45 Is it necessary that a "suburban" or a "station wagon" owned by the school district and used to transport pupils be equipped with special lights and signs?

The Vehicle Code requires that vehicles not classified as school buses, but having a pupil seating capacity in excess of 10 pupils, be identified as a school bus by temporary or permanent signs and lights and that lamps and signals, including the flashing red and amber signal lamps visible from the front and rear of such vehicles, be installed.

14:46 Do bus pupils who attend religious released-time classes need to be conveyed to the church or parochial school on the public school bus?

No.

14:47 Is there anything in the Public School Code which defines the maximum length of time a pupil should ride a school bus to or from school?

No.

14:48 May the school bus be routed on a private road, such as a private estate?

No. School bus routes must follow public highways.

14:49 What are the rules regarding the entrance door of a school bus?

The School Bus Standards of the Bureau of Highway Safety provide that the entrance door shall be located to the right of the operator and controlled at all times by the operator. The door shall be at least 20 inches wide and shall be an approved safety type with suitable hand rails.

14:50 Where the transportation budget item of a school is found to be insufficient, may it be increased by the board of school directors by a transfer from another item of the budget?

Yes, but only after the budget has been in operation for 90 days. (Section 687)

14:51 May a school district use a public carrier for pupil transportation?

Yes. Section 1361 of the School Code states that if the board deems it to the best interest of the school district, appropriate funds may be paid to urban common carrier mass transportation authorities to assist the authorities in meeting operational expenses.

14:52 May school districts participate in cooperative purchasing of school buses and other items of equipment?

Yes. This authority is found in Section 2941 of the School Code which states that school districts may jointly with other political subdivisions or school districts make purchases of materials, supplies or equipment, including buses, which such political subdivisions may legally purchase, and may enter into such agreements as may be deemed necessary to accomplish such purposes.

14:53 May a school district establish and maintain shelters for the school bus pupils at various places on the school bus route?

Yes. Shelters are authorized in Section 1362 of the Public School Code.

14:54 May a school district provide transportation for part of the way to a nonpublic school?

No. Act 372, signed December 12, 1972, requires school districts which transport pupils to provide "identical" services to nonpublic pupils as are provided to public school pupils and this means to the school building of attendance; provided, of course, that the nonpublic school building is within the school district or within a 10-mile distance outside the school district boundary.

14:55 Must an individual request for transportation to a nonpublic school be submitted by the parent or guardian, or may a list of such pupils be submitted by the nonpublic school officials?

By the nonpublic school officials. But, under the guidelines issued by the Department of Education for the operation under Act 372, the parents of an eligible pupil may apply directly to the public school officials if the nonpublic school officials fail to do so.

14:56 Is there any limitation on the distance for which the school board may authorize transportation?

Section 1361 of the School Code, as amended by Act 372 in 1972, indicates that the school district may provide for the free transportation of any resident pupil to and from the public and to nonpublic schools within the school district or within a 10-mile distance of the school district boundary, and to any points in the commonwealth in order to provide tours for any purpose connected with the educational pursuits of the pupils.

14:57 Are seat belts for pupils required equipment on all school buses?

No, not as of this writing, but bills to that effect have been introduced into the Legislature.

14:58 Is state aid available for the transportation of handicapped children?

Yes. In Section 2541 of the School Code, we find that payments shall be made to districts by the commonwealth for the transportation of exceptional children regularly enrolled in special classes approved by the Department of Education or enrolled in a regular class in which approved educational provisions are made for them.

14:59 Are school buses required to have special mirrors in front of the bus body?

Yes. Act 146, passed December 9, 1970, mandates one mirror so located as to reflect to the operator an unobstructed view of the area immediately in front of the bus.

14:60 May school districts lease or rent school buses under emergency conditions?

Yes.

14:61 Must a school bus be equipped with safety glass?

Yes. This is required standard both nationally and by the commonwealth.

14:62 Are there any regulations regarding the exhaust system of a school bus?

The standards adopted by the Bureau of Highway Safety state that the exhaust system shall be so constructed that exhaust gases will be kept out of the body of the school bus, and adequate ventilation shall be provided in all school buses.

14:63 In some instances, may board and lodging be provided in lieu of transportation of children?

Yes. Section 1331 of the School Code provides that, when suitable transportation is not feasible, the school board may pay for suitable board and lodging for any child.

14:64 May transportation be provided by school districts for pupil attendance to the State Farm Show?

Yes. Section 517 of the School Code makes this a possibility provided the trip is part of the pupils' course of study and the group is properly supervised by a professional employe of the school district.

Chapter XV

Local finances

15:1 Does a school board have power to incur debts?

Yes. The "Municipal Borrowing Act" grants school boards authority to create and incur indebtedness against their school districts and to issue bonds to secure the indebtedness. (Section 631 and Act 185, 1972)

15:2 For what purpose may a school district borrow money or incur indebtedness?

Act 3, signed March 15, 1967, amended Section 631 of the School Code to permit indebtedness for the following purposes:

1. To purchase sites for buildings or to enlarge site.
2. To erect, equip or furnish school buildings.
3. To repair, remodel or rebuild a school building.
4. To purchase school buses.
5. To pay off an earlier debt.
6. To pay a refund on taxes.
7. To refund a bond issue.
8. To fund floating indebtedness incurred for current expenses and debt service.
9. To fund temporary indebtedness incurred for permanent improvement in anticipation of a bond issue.

15:3 Must the qualified voters of the school district approve the issue of bonds and capital notes?

The approval of the electors is required for school building projects when the estimated costs exceed the limits of Act 34 (1973).

15:4 Must the board of school directors formally adopt a resolution to issue bonds or capital notes?

Yes. The affirmative vote of a majority of all the members of the board of school directors in every school district, duly recorded, showing how each member voted is required to take action on creating or increasing any indebtedness. (Section 508)

15:5 Is there any limit to the amount that can be raised by bonds, bond anticipation notes, capital notes, tax and revenue anticipation notes and budget notes?

Yes. Act 185 of the 1972 session of the General Assembiy completely revised borrowing limitations of school districts and local governments. In turn, Act 185 was modified by Act 206 signed into law October 3, 1972; Act 214 signed into law October 11, 1972; and Act 280 signed into law November 30, 1972. In general, the borrowing limits for school districts and local governments are based upon percentages of average annual revenue for the three prior years that precede the borrowing. Filing of data with the Department of Community Affairs must precede all such borrowing.

School district debt limits under Act 185 are considered to be: a limitation of nonelectoral debt of 250 percent of revenue plus a lease rental debt (if any) of 300 percent of revenue, or a total of 550 percent of average revenue. Under Act 185, there is no longer any absolute limitation on debt that is approved by the electorate. (See also exemption of $50,000 provided by Act 8, 1975.)

15:6 Is the consent of the governor necessary to the issuance of building authority bonds?

In the case of authority bonds issued by the State Public School Building Authority, the bonds must carry a facsimile signature of the governor and the president of the authority together with the actual signature of the authority secretary and treasurer. (Section 3166) However, in the case of authority bonds issued by a municipal authority, which includes school districts, only the signatures of such officers as the authority determines are required. The usual officers signing are the president and treasurer.

15:7 What are the maximum legal rates of interest for authority bonds?

Interest rates may not exceed six percentum per annum. (Sections 3166 and 3187)

15:8 Must authority bonds and notes be sold at a public sale?

No. The state public building authorities may use an invited sale, a private sale or a negotiated sale as well as open bidding at public sales, while the municipal authority representing a school district may sell authority bonds at public or private sales. However, school boards must sell their general obligation bonds to the highest responsible bidder or bidders after public notice by advertisement once a week for three weeks in not less than six or more than 12 newspapers.

15:9 Must the school board file a debt statement with the secretary of education?

Yes. This is part of the annual financial reports required of all of the school districts, which includes a list of the amount of bonds or other indebtedness that become due during the fiscal year, together with the amount paid on each item of indebtedness. Act 185 requires that a statement must be filed with the Department of Community Affairs before undertaking any borrowing.

15:10 Must the money received from the sale of bonds and notes be deposited in a special bank account?

No.

15:11 May a school district invest temporarily the proceeds from the sale of bonds pending actual use of the money?

Yes. The School Code is not specific on this point; however, Act 46, signed April 25, 1968, added Section 440.1 to the School Code which permits the school board to authorize its treasurer to make temporary investment of school funds.

15:12 May a school board borrow in anticipation of current revenues?

Yes, and in an amount not to exceed the anticipated current revenue. (Section 640 — See also 15:5)

15:13 May a school district invest capital reserve funds?

This is covered in Section 691 of the School Code which provides that monies in the capital reserve fund shall be kept separate and apart from any other fund by the treasurer of the school district and the monies in the fund may be invested by the board of directors in securities legal for the investment of sinking fund monies of school districts. Such capital reserve funds may be established for a period up to five years.

15:14 May a school district make a down payment, or pay out of current funds, any part of the cost of the improvement or equipment which is to be financed by borrowing?

No, but funds may be borrowed in advance of an authorized bond sale. (Section 631 (9))

15:15 Must the authority board adopt a borrowing resolution in all cases where bonds and notes are issued?

Yes. The bonds of the authority, both municipal and state public schools, shall be authorized by resolution of the board. (Sections 3166 and 3187)

15:16 May bonds and notes be made payable to the order of an individual or bank?

No. All bonds are marked payable to "bearer." However, the monies receivable from bonds, by an authority, shall be paid over to the treasurer of the authority. (Section 3170)

15:17 May a school district borrow from a bank even though an employe of the school district is an officer, director or stockholder of the bank?

The code is not specific on this point; therefore, it is assumed to be possible. Section 621 of the code requires a majority vote of the board of school directors to name a depository.

15:18 What notice must be given by a school board for a public sale of bonds?

School boards are required to give public notice by advertisement once a week in not less than six or more than 12 newspapers of large general circulation in different parts of the commonwealth, the first advertisement to be published not less than 15 days before the day fixed for the opening of the bids. (Section 3166)

15:19 What are "short term" investments of a school district?

Section 440.1 of the School Code authorizes a board of school directors to authorize the treasurer of such school districts to make temporary investment of school district funds in United States treasury bills, or to place funds in time accounts or share accounts of institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation to the extent that such accounts are so insured or in certificates of deposit to the extent such certificates are secured by a proper bond.

Chapter XVI

Nonteaching employes

16:1 Do nonteaching employes of the school district come under the minimum wage and overtime provision law of federal law?

No. The United States Supreme Court in the National League of Cities case ruled that such law does not apply to state and local government employes.

16:2 Do nonteaching school district employes have the right to strike?

Yes. Act 195, the Public Employe Relations Act, grants school employes, professional and nonprofessional, who organize for bargaining purposes, a limited right to strike.

16:3 Do nonteaching employes of a school district enjoy tenure?

No. The only exception is the secretary who obtained her position on the basis of a civil service examination adopted by and administered by the school district, and whose selection was from the top of the civil service listing for the position.

16:4 Are nonteaching employes, or nontenured employes, entitled to hearings before dismissal?

Yes. Employes not covered by tenure may request a hearing under the Local Agency Law.

16:5 Can a board of school directors in filling a position, either teaching or nonteaching, specify that the candidates be residents of the school district?

Yes. The United States Supreme Court has upheld such residency requirements.

16:6 What retirement benefits are available to nonteaching employes?

The Pennsylvania Public School Employes Retirement Act provides that all full-time and regular part-time employes, professional and nonprofessional, are eligible for membership.

16:7 **May individual employes elect not to enter this retirement system?**

No. All eligible school employes must enroll as members.

16:8 **Does a nonteaching employe make contributions to the retirement system?**

Yes. Contributions by members is required by law, and amounts to 5¼ percent of the member's salary.

16:9 **How are the employes' contributions paid into the system?**

Employe contributions to the State Public Employes' Retirement Fund are deducted from the employe's salary, each pay, by the school board, and paid over to the retirement board.

16:10 **How are the employers' contributions determined?**

The rate of contributions into the retirement fund by school boards and the commonwealth is determined annually by the actuary for the retirement board. The current actuary, George W. Buck, Inc., New York City, has set a figure of 6.655 percent of the school district's employe payroll for 1976-77 as the district's share and the amount to be paid by the state.

16:11 **Is "vesting" of retirement funds available to nonteaching employes?**

Yes. Vesting means the right of a member, who separates from service after having 10 years or more of credited service, to leave his accumulated deductions (contributions with interest) in the fund and, upon reaching superannuation retirement age, make application and receive retirement allowance.

16:12 **Are nonteaching employes of school districts participating in the Pennsylvania Public Employes' Retirement System covered by Social Security?**

These are two completely separate laws. But, in each case, a new employe must contribute to each fund.

16:13 **Are part-time nonteaching employes of school districts, covered by Social Security?**

Yes.

16:14 **Is an individual who became a retirement system member before the applicable referendum in December 1957, who refused Social Security, whose retirement system membership has continued, and who transfers his employment from one school district to another, required to have Social Security coverage of wages paid to him by his new employer?**

Yes.

16:15 **Must every person who becomes a member of the retirement system also be covered by Social Security?**

Yes. All state and local employes have been brought under Social Security.

Chapter XVII

Act 195 — The Public Employe Relations Act

17:1 What is the Public Employe Relations Act?

Act 195 (Senate Bill No. 1333) of 1970.

17:2 What is the PLRB?

Pennsylvania Labor Relations Board, which has administrative authority for the operation of Act 195.

17:3 What existed before Act 195?

Act 492, the 1947 No-Strike Law, which prohibited strikes by public employes and effectively ruled out binding collective bargaining by public employes and their employers.

17:4 What rights are given to public employes by Act 195?

The right by public employes to organize and bargain collectively through selected representatives; providing compulsory mediation and fact-finding for collective bargaining impasses; providing arbitration for certain public employes for collective bargaining impasses; defining the scope of collective bargaining; establishing unfair employe and employer practices; prohibiting strikes for certain public employes; permitting strikes under limited conditions; providing penalties for violations; and establishing procedures for implementation.

17:5.1 What is collective bargaining?

Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached, but such obligation does not compel either party to agree to a proposal or require the making of a concession. (Act 195, Section 701)

17:5.2 What is a bargaining unit?

A bargaining unit is a group of employes with a community of interests that has been certified by the PLRB as an appropriate unit for bargaining purposes. All employes in the group are members of the bargaining unit. All members of a bargaining unit need not be, and are not necessarily, members of the employe organization which represents the bargaining unit.

17:5.3 What is a bargaining agent?

A bargaining agent is a person or an organization selected by the members of a bargaining unit to represent them in bargaining with an employer. The recognized bargaining agent must be determined through procedures established by PLRB and is the only agent with whom the employer may officially bargain with respect to employes in the bargaining unit.

17:5.4 Are public employers required to enter into collective bargaining?

Yes. Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negoitation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached, but such obligation does not compel either party to agree to a proposal or require the making of a concession. (Act 195, Section 701)

17:6 What rights does a recognized or certified employe organization receive?

The exclusive representation of members of the designated bargaining unit and the right to assess dues and fees to organization members for such representation.

17:7 May PLRB assist in settling an impasse in a locality?

Yes. The Pennsylvania Bureau of Mediation, which is not a part of the labor board, has the initial responsibility to provide mediation service to the parties at impasse. If the Bureau of Mediation is unable to resolve the impasse, it shall notify the PLRB that the parties have failed to reach an agreement and may recommend fact-finding. The PLRB may, at its discretion, order fact-finding to assist the parties in resolving an impasse. (Section 802, Act 195)

17:8 What penalties are imposed against employe organizations which participate in a strike permitted under the act?

None. If a strike by public employes occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of Act 195 have been completely utilized and exhausted, and such a strike does not create a clear and present danger or threat to the health, safety or welfare of the public. (Act 195, Section 1003, Article X)

17:8.1 What penalties are imposed against employe organizations which participate in prohibited strikes under the act?

A variety. Strikes are prohibited by all public employes until the procedures outlined in sections 801 and 802 of the act are fully utilized. (Section 1002 of Act 195)

Strikes for any reason are prohibited by guards at prisons or mental hospitals, and by employes directly involved with the operation of the courts of the state. (Section 805 of Act 195)

Strikes which create "a clear and present danger or threat to the health, safety or welfare of the public" are prohibited and the public employer is directed to initiate appropriate action to enjoin such strikes. (Section 1005 of Act 195)

Any employe adjudged guilty of failing to abide by a lawful court order with regard to a strike is subject to "suspension, demotion, or discharge at the discretion of the public employer." (Section 1005 of Act 195)

No employe engaged in a strike is entitled to pay "for the period engaged in any strike." (Section 1006 of Act 195)

Further punishment by fine or imprisonment may be assessed by the courts against both employes and employe organizations at the discretion of the court. (Sections 1008 and 1009 of Act 195)

17:9 Can a board of school directors set a deadline for submission by an employe organization of items to be negotiated?

Yes. However, such a deadline may only be reached through the bargaining process and must be consistent with the timetable for bargaining established under the act. (See Section 801 of Act 195 and PSBA's guidebook on Act 195 for further information on this.)

17:10 May a board of school directors delegate it responsibilities in connection with negotiations of agreements under Act 195?

Yes. Public employers may select representatives to act in their interest in any collective bargaining with representatives of public employes. It should be noted that they are still responsible although the task has been delegated. (Act 195, Section 601)

17:10.1 May the public employer determine who will function in his organization as confidential employes and supervisory employes who are excluded from bargaining units?

Yes. The public employer has the right to determine who will perform the work of supervisory employes and confidential employes, subject to concurrence by the PLRB if such determination is challenged. (Section 1201 (b) (2) of Act 195)

17:11 Is there a difference between classes of supervisors under Act 195?

Yes. First level supervisors (See Section 301 (19) of Act 195) are entitled to "meet and discuss" privileges with the public employer (See Section 301 (17) of Act 195) but must respect the requirements of meet and discuss (See Section 1201 (b) (9) of Act 195). Such first level supervisors may not belong to the bargaining unit, and must function as a supervisor under the act (See Section 301 (6) of Act 195) as assigned by the public employer. All other supervisors above first level, and confidential employes, are excluded entirely from coverage of the act.

17:12 May a board of school directors agree to binding arbitration for the resolution of grievances and violations that arise under an existing contract?

Yes. Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tripartite board of arbitrators as the parties may agree. (Act 195, Section 903)

17:13 May a school district adopt a budget for the ensuing school year even though negotiations have been completed or have not resulted in an agreed-upon contract for the school year covered by the budget?

Yes. The school district is required to adopt a budget, irrespective of the status of negotiations, before the final budget submission date. (Section 687 of the School Code)

17:13.1 What is the effect of the budget submission date?

Section 301 (12) of Act 195 defines budget submission date. Coupled with the timetable established for bargaining under Section 801 of the act (see also PSBA's Act 195 guidebook on this subject), there is a season for bargaining established. If the public employer has satisfied the various provisions for bargaining in accordance with the timetable established under the act, and has proceeded to adopt a budget as required by law, the employer cannot be forced to bargain beyond the amount appropriated in the adopted budget.

17:14 Must a chief school administrator negotiate the terms and conditions of employment of subsequently hired employes with the exclusively recognized employe organization?

Not unless the position for which the new employe is being hired is a bargaining unit position which is a new position and which was not considered under the bargaining agreement then existing. In that event, it may be necessary to reach an agreement with the bargaining unit representative as to where the proper salary to be paid should fall. All other new employes who will become members of the bargaining unit are automatically covered by the terms of the bargaining agreement. Terms and conditions of employment for persons not included in the bargaining unit are not a concern of the bargaining unit representative.

17:15 May a school board and an employe organization enter into an agreement which requires that employes within the unit belong to the employe organization?

No. Section 401 of the Act 195 protects employes from being required to belong to an employe organization.

17:15.1 If employes cannot be required to belong to an employe organization, is there any limitation on the freedom of employes to choose whether or not they will belong to an employe organization?

Yes. Membership dues deduction and maintenance of membership, after choosing to become a member, may be included in bargaining agreements through mutual agreement between employer and employe representative. However, agency shop and closed shop are forbidden under Act 195.

17:16 May a school district prohibit any of its employes from serving on the negotiating team of an employe organization with which it is negotiating?

No, except for confidential employes and supervisors. Public employers are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act, and (2) dominating or interfering with the formation, existence or administration of any employe organization. (Act 195, Section 1201) Confidential employes and supervisors may not serve on a bargaining unit negotiating team, but may represent the employer in such bargaining.

17:17 Does Act 195 prohibit unfair practices by public employers and by employe organizations?

Yes. This is spelled out in Article XII of the act, which identifies unfair practices, and again in Article XIII, which outlines the prevention of unfair practices. Sections 702 and 704 of the act also touch on unfair practices.

17:18 Are there limitations on what may be incorporated into a bargaining agreement?

Yes. The entire subject of scope of bargaining under Act 195 is complex and not appropriate for discussion in this handbook. This subject is treated at length in the PSBA Act 195 guidebook. However, there are precise limitations applied by Section 703 of the act which prevent "effecting or implementing" a provision in collective bargaining agreement which is contrary to statutes enacted by the General Assembly or the provisions of municipal home rule charters. Examples are the statutes which regulate sabbatical leave and retirement system benefits.

17:19 Does the Department of Education have any responsibilities under Act 195?

No. The administration of the act is assigned to the Pennsylvania Labor Relations Board, and the department has no functions under this act.

17:20 Where may a school district secure additional information about Act 195 and PLRB?

1. The Pennsylvania School Boards Association

412 North Second Street
Harrisburg, Pennsylvania 17101
Telephone (717) 233-1642

2. The Pennsylvania Labor Relations Board

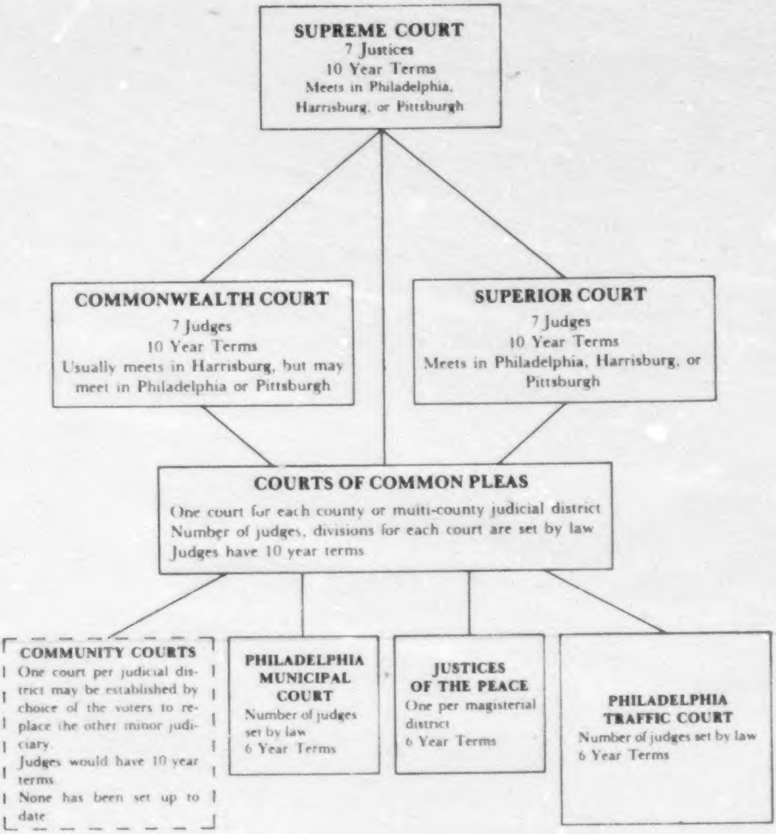
   1617 Labor and Industry Building
   Seventh & Forster Streets
   Harrisburg, Pennsylvania 17120

   Telephone (717) 787-1091

3. *School Law Information Exchange*, published by the Pennsylvania School Board Solicitors Association, a department of PSBA.

4. *Public Sector Arbitration*, published by the Pennsylvania School Boards Association.

THE COURTS OF THE COMMONWEALTH



SUPREME COURT
7 Justices
10 Year Terms
Meets in Philadelphia, Harrisburg, or Pittsburgh

COMMONWEALTH COURT
7 Judges
10 Year Terms
Usually meets in Harrisburg, but may meet in Philadelphia or Pittsburgh

SUPERIOR COURT
7 Judges
10 Year Terms
Meets in Philadelphia, Harrisburg, or Pittsburgh

COURTS OF COMMON PLEAS
One court for each county or multi-county judicial district
Number of judges, divisions for each court are set by law
Judges have 10 year terms

COMMUNITY COURTS
One court per judicial district may be established by choice of the voters to replace the other minor judiciary.
Judges would have 10 year terms.
None has been set up to date.

PHILADELPHIA MUNICIPAL COURT
Number of judges set by law
6 Year Terms

JUSTICES OF THE PEACE
One per magisterial district
6 Year Terms

PHILADELPHIA TRAFFIC COURT
Number of judges set by law
6 Year Terms

Glossary

A

Adjudication — Giving or pronouncing a judgment or decree; also the judgment given.

Adversary system — The system of trial practice in the United States and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and establish opposing contentions before the court.

Advisory arbitration — Similar to binding interest or grievance arbitration except that a decision rendered by the arbitrator(s) is advisory only, and not binding on the parties.

Allegation — The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

Amicus curiae (a-mi'kus ku'ri-e) — A friend of the court; one who interposes, with the permission of the court, and volunteers information upon some matter of law.

Answer — A pleading by which defendant endeavors to resist the plaintiff's allegation of facts.

Appellant (a pel'ant) — The party appealing a decision or judgment, which he considers unfavorable, to a higher court.

Appellate Court — A court having jursidiction of appeal and review; not a "trial court."

Appellee (ap e le') — The party against whom an appeal is taken.

At issue — Whenever the parties to a suit come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be "at issue" and ready for trial.

B

Bail — To set at liberty a person arrested or imprisoned, on security being taken, for his appearance on a specified day and place.

Banc (bangk) — Bench; the place where a court permanently or regularly sits. A "sitting in banc" is a meeting of all of the judges of a court, as distinguished from the sitting of a single judge.

Bargaining agent — An organization elected by employes in a particular bargaining unit to serve as their representative for collective bargaining purposes.

Bargaining unit — A unit of employes certified by the Pennsylvania Labor Relations Board as an appropriate unit for collective bargaining purposes; or a unit agreed to by the employer and its employes or their representatives.

Binding instruction — One in which jury is told if they find certain conditions to be true they must find for plaintiff, or defendant, as the case might be.

Brief — A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of his case.

Burden of proof — In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute.

C

Certiorari (s'er'shi-o-ra ri) — An original writ commanding judges or officers of inferior courts to certify or to return records of proceedings in a cause for judicial review.

Code — A collection, compendium or revision of laws systematically arranged into chapters, table of contents and index and promulgated by legislative authority. (Such as School Code or Motor Vehicle Code.)

Competency — In the law of evidence, the presence of those characteristics which render a witness legally fit and qualified to give testimony.

Contempt of court — Any act calculated to embarrass, hinder or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order.

D

Damages — Pecuniary compensation which may be recovered in the courts by any person who has suffered loss, detriment, or injury to his person, property or rights, through the unlawful act or negligence of another.

De novo (de no'vo) — Anew, afresh. A "trial de novo" is the retrial of a case.

Declaratory judgment — One which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

Decree — A decision or order of the court. A final decree is one which fully and finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree which is not final.

Demur (de-mer') — To file a pleading (called "a demurrer"), admitting the truth of the facts in the complaint, or answer, but contending they are legally insufficient.

Deposition — The testimony of a witness not taken in open court, but in pursuance of authority given by statute or rule of court to take testimony elsewhere.

Dissent — A term commonly used to denote the disagreement of one or more judges of a court with the decision of the majority.

Due process — Law in its regular course of administration through the courts of justice. The guarantee of due process requires that every man have the protection of a fair trial.

E

Eminent domain — The power to take private property for public use by condemnation.

Enjoin — To require a person, by writ of injunction from a court of equity, to perform or to abstain or desist from some act.

Equity, courts of — Courts which administer a legal remedy according to the system of equity, as distinguished from courts of common law.

Escrow (es-kro') — A writing, or deed, delivered by the grantor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition.

Estoppel (es-top'el) — A person's own act, or acceptance of facts, which preclude his later making claims to the contrary.

Et al — An abbreviation of et alii, meaning "and others."

Et seq — An abbreviation of et sequentes, or et sequentia, "and the following."

Ex parte (ex par'te) — By or for one party; done for, in behalf of or on the application of one party only.

Exception — A formal objection to an action of the court, during the trial of a cause, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal.

Exhibit — A paper, document or other article produced and exhibited to a court during a trial or hearing.

Expert evidence — Testimony given in relation to some scientific, technical or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

F

Fiduciary (fi-du'shi-a-ri) — A term derived from the Roman law, meaning a person holding the character of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires.

G

Grievance arbitration — Use of an outside third party to resolve disputes between a public employer and employes arising out of the interpretation of the provisions of a collective bargaining agreement. This is the final step of the grievance procedure mandated by Act 195, the Public Employe Relations Act. The arbitrator's decision is binding on the parties.

I

Implied contract — A contract in which the promise made by the obligor is not expressed, but inferred by his conduct or implied in law.

Inadmissible — That which, under the established rules of evidence, cannot be admitted or received.

In banc — On the bench; all judges of the court sitting together to hear a cause.

In camera (in kam'e-ra) — In chambers; in private.

Injunction — A mandatory or prohibitive writ issued by a court.

Inter alia (in ter a'li-a) — Among other things or matters.

Inter alios (in'ter'a-li-os) — Among other persons, between others.

Interest arbitration — Use of outside third party (ies) to determine the essence of collective bargaining agreements. (For example, such parties could determine wages, hours and other terms and conditions of employment).

Interlocutory — Provisional; temporary; not final. Refers to orders and decrees of a court.

Interrogatories — Written questions propounded by one party and served on adversary, who must provide written answers thereto under oath.

Intervention — A proceeding in a suit or action by which a third person is permitted by the court to make himself a party.

Irrelevant — Evidence not relating or applicable to the matter in issue; not supporting the issue.

L

Libel — A method of defamation expressed by print, writing, pictures or signs. In its most general sense any publication that is injurious to the reputation of another.

Limitation — A certain time allowed by statute in which litigation must be brought.

Lockout — This term is not found in Act 195. However, it is generally construed to mean an action taken by an employer to keep his employes from working, as opposed to a strike where employes take the overt action of refraining from working in some fashion.

M

Malfeasance (mal-fe'zans) — Evil doing; ill conduct; the commission of some act which is positively prohibited by law.

Mandamus (man-da-'mus) — The name of a writ which issues from a court of superior jurisdiction, directed to an inferior court, commanding the performance of a particular act.

Mandate — A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence, or decree.

Mandatory subjects of bargaining — Those subjects which a public employer is required to bargain with employes or their representative, generally limited to wages, hours and other terms and conditions of employment.

Master — An officer of the court, usually an attorney, appointed for the purpose of taking testimony and making a report to the court. Used most frequently in divorce cases.

Mediation — Use of a third party neutral to help the parties reach agreement over the terms of a contract. Under Act 195, mediators are appointed by the Bureau of Mediation to try to get the parties to settle a contract. Mediators act in a "persuasive" capacity and their recommendations are not binding on either party.

Moot — Unsettled; undecided. A moot point is one not settled by judicial decisions.

Moral turpitude — Conduct contrary to honesty, modesty or good morals.

N

Negligence — The omission to do something which a reasonable man, guided by ordinary considerations, would do; or the doing of something which a reasonable and prudent man would not do.

Nisi prius (ni'si pri'us) — Courts for the initial trial of issues of fact, as distinguished from appellate courts.

Nisi decision (ni'si) — A court order obtained on motion by either party to show cause why the particular relief sought should not be granted.

Nolle prosequi (nol'e pros'e-kwi) — A formal entry upon the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, by which he declares that he "will no further prosecute" the case.

Nolo contendere (no'lo kon-ten'de-re) — A pleading usually used by defendants in criminal cases, which literally means I will not contest it.

O

Objection — The act of taking exception to some statement or procedure in trial. Used to call the court's attention to improper evidence or procedure.

Of counsel — A phrase commonly applied to counsel employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney of record.

P

Parties — The persons who are actively concerned in the prosecution or defense of legal proceeding.

Permissive subjects of bargaining — Those subjects which a public employer may choose not to bargain if it so desires, including but not limited to matters of inherent managerial policy such as its functions and programs, standards of services, overall budget, utilization of technology, organizational structure and selection and direction of personnel.

Plaintiff — A person who brings an action; the party who complains or sues in a personal action and is so named, on the record.

Plaintiff in error — The party who obtains a writ of error to have a judgment or other proceeding at law reviewed by an appellate court.

Pleading — The process by which the parties in a suit or action alternately present written statements of their contentions, each responsive to that which precedes and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side and denied on the other, called the "issue" upon which they then go to trial.

Presumption of fact — An inference as to the truth or falsity of any proposition or fact, drawn by a process of reasoning in the absence of actual certainty of its truth or falsity, or until such certainty can be ascertained.

Presumption of law — A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.

Prohibited subjects of bargaining — Those matters which would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly or the provisions of municipal home rule charters.

Q

Quash — To overthrow; vacate; to annul or void a summons or indictment.

Quasi judicial (kwa'si) — Authority or discretion vested in an officer wherein his acts partake of a judicial character.

Quid pro quo — "What for what," a fair return or consideration.

Quo warranto (kwo wo-ran'to) — A writ issuable by the state, through which it demands an individual to show by what right he exercises an authority which can only be exercised through grant or franchise emanating from the state.

R

Referee — A person to whom a cause pending in a court is referred by the court to take testimony, hear the parties and report thereon to the court. He is an officer exercising judicial powers and is an arm of the court for a specific purpose.

Rule nisi, or rule to show cause (ni'si) — A court order obtained on motion by either party to show cause why the particular relief sought should not be granted.

S

Scope of bargaining — Duty to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment in accordance with Section 701 of Act 195.

Sine qua non (si'ne kwa non) — An indispensable requisite.

Slander — Base and defamatory spoken words tending to prejudice another in his reputation, business or means of livelihood. "Libel" and "slander" both are methods of defamation, the former being expressed by print, writings, pictures or signs; the latter orally.

Specific performance — A mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what he has agreed to do.

Stare decisis (sta're de-si'sis) — The doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

Statute — The written law in contradistinction to the unwritten law.

Stay — A stopping or arresting of a judicial proceeding by order of the court.

Stipulation — An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless assented to by the parties, and most stipulations must be in writing.

Strike — Concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

Subpoena (su-pe'na) — A process to cause a witness to appear and give testimony before a court or magistrate.

Summons — A writ directing the sheriff or other officer to notify the named person that an action has been commenced against him in court and that he is required to appear, on the day named, and answer the complaint in such action.

Supersedeas (su-per-se-de-as) — A writ containing a command to stay proceedings at law, such as the enforcement of a judgment pending an appeal.

T

Testimony — Evidence given by a competent witness, under oath; as distinguished from evidence derived from writings and other sources.

Transcript — The official record of proceedings in a trial or hearing.

Trial de novo (de no'vo) — A new trial or retrial had in an appellate court in which the whole case is gone into as if no trial had been had in a lower court.

V

Venue (ven'u) — The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.

Verdict — In practice, the formal and unanimous decision or finding made by a jury, reported to the court and accepted by it.

W

Waiver of immunity — A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against himself.

Weight of evidence — The balance or preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

Willful — A "willful" act is one done intentionally without justifiable cause, as distinguished from an act done carelessly or inadvertently.

Without prejudice — A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

Writ — An order issuing from a court requiring the performance of a specified act, or giving authority and commission to have it done.

Some of the definitions in this glossary were extracted from "The Newsman's Guide to Legalese," **a publication of the Pennsylvania Bar Association, Harrisburg.**

Using the index

The first digit after each reference indicates chapter, followed by question number, e.g., 12:9.3 means Chapter 12, question 9.3. Rather than repeat chapter numbers and initial question numbers in multiple references, the additional question number is placed in parentheses, e.g., 2:13.1(2)(3) means Chapter 2, questions 13.1, 13.2 and 13.3. All questions are broken down under the following subject categories:

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  - Employe Organizations
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